SYNOPSIS OF MORAL AND PASTORAL THEOLOGY

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according to the Code of Canon Law

VOLUME III

On Justice and Contracts, with Rerum Novarum and the Civil-Law Supplement

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On the Virtue of Justice (Volume III)

Prolegomena: On Justice and Right

Object and Division of the Treatise.

1. Among the moral virtues Justice stands out, by which there is rendered to each one his own right; for the other moral virtues directly and immediately perfect only the subject, while justice orders man to another, and therefore promotes the good not only of the subject himself, but also of others.[1]

[1] In explaining the virtue of justice, we shall by that very fact declare how far the fifth, seventh, eighth, and tenth precepts of the Decalogue extend, which forbid the rights of others to be injured with respect to bodily life, external goods, and truth: "You shall not kill. - You shall not steal. - You shall not speak false testimony against your neighbor. - You shall not covet your neighbor's house" (Exod. XX, 13-17).

2. Justice is one of the cardinal virtues, which are so called because they are, as it were, the hinges around which the other moral virtues turn. Of the others we have already spoken in the Treatise on the Virtues; but justice is treated in a special Treatise; for since it embraces manifold rights and duties by which men are bound to one another, both the breadth of the object and the difficulties with which this matter abounds demand a fuller exposition. For the rights and duties of each man cannot easily be defined and measured, especially since they not rarely seem to be in conflict with one another, and, moreover, in our days the relations among the members of the human family have become more frequent and more intricate.

At the very threshold of the Treatise it must be accurately explained what justice is, and consequently what right is, about which justice is concerned.

On Justice and Right. — I. The Notion and Species of Justice.

3. 1. The multiple meaning of justice. Among sacred authors[2] the word justice obtains a multiple signification: (a) often it designates the whole complex of all the virtues: "Blessed are they who hunger and thirst after justice";[3] hence St. Joseph is called "just,"[4] because, namely, he was endowed with all virtues; (b) sometimes it also signifies any act of virtue: "Take heed that you do not your justice (i.e., good works) before men";[5] or the habit of virtue: "Unless your justice abound more than that of the scribes and Pharisees, you shall not enter into the kingdom of heaven";[6] (c) since, moreover, the Christian virtues are infused in justification itself, justice is also taken for justification: "Abraham believed God, and it was reputed to him unto justice";[7] (d) finally, it signifies the special virtue of justice, by which to another his own right is rendered: "He has appointed a day wherein he will judge the world in equity,"[8] dikaiosyne, which is the Greek word for justice. Therefore, whenever that word is found in Scripture, the sense must be defined from the context.

[1] St. Thomas, 2. 2., q. 58; Lugo, disp. I; Soto, lib. III, q. 2; Lessius, lib. II, cap. 1; Carriere, n. 2-7; Pottier, diss. II; Vermeersch, n. 12-76.

[2] In Hebrew justice is expressed by a double word: *yoscher*, which sounds the same as rectitude, which avoids crooked ways; and *tsedaqah*, which designates firmness, inasmuch as justice is a norm in no way flexible according to which human actions ought to be performed. - In Greek *dikaiosyne* arises from the root *dike*, by which custom, or the accustomed manner of acting, is signified, because among the Greeks that which was customarily done was held as just. - In Latin *justitia* is derived from the word *jus*, which, according to many, arises from the word *jussum*; but much more probably *jus* is a root akin to the Sanskrit word *jaus*, which signifies something religious and sacred, because right is something sacred. Cf. Breal and Bailly, *Dictionnaire etymologique latin*, Paris, 1898, p. 144.

[3] Matt. V, 6.

[4] Matt. I, 19.

[5] Matt. VI, 1.

[6] Matt. V, 20.

[7] Rom., IV, 3; and so throughout the whole Epistle to the Romans.

[8] Acts, XVII, 31. - We have found no place in the Vulgate where the word justice certainly designates the virtue by which to each one his own is rendered.

4. 2. The genuine definition of justice. (A) Inasmuch as it is a special virtue, justice is usually defined: the cardinal moral virtue inclining the will to render to another his own right according to equality.

5. It is called: (a) a moral virtue, that it may be distinguished from the theological virtues, whose material object[1] is God Himself, and whose formal object or motive is one of the divine attributes; that is to say, the object of justice is not God, but something created, namely, the right to be rendered to another; but the motive is not one of the divine attributes, but that special uprightness situated in this, that we revere the right of others. - It is also called cardinal, because among the moral virtues it holds a principal place, and is one of those four virtues to which the others are referred.

[1] The material object is that about which the virtue is concerned; the formal object or motive is that which moves the power to act according to this virtue. - Concerning the cardinal virtues, cf. On the Virtues in General, n. 587-590.

This virtue, considered in itself, can be natural, since many precepts of justice can be known by reason and fulfilled by the will, with the assistance of the divine concurrence alone as natural; but in fact, since we have been raised to the supernatural state, it must be supernatural in us, namely inasmuch as we must use at once the light of faith and of reason to know rights and duties, and be helped by actual grace and impelled by a supernatural motive to exercise acts of justice.

6. (b) Inclining the will: by these words is signified the faculty of the soul in which justice resides; for the intellectual moral virtues, such as prudence, are in the intellect, while justice is situated in the will and immediately perfects it.

7. (c) To render to another his own right: for the proper object of this virtue is to render to each one his own right, i.e., that which is strictly owed to him, not however from mere fittingness or charity. Hence justice is a virtue toward another; for no one, properly speaking, has rights toward himself, but rights and duties are so coordinated that to the right which inheres in some man there corresponds a duty in another. - Under this aspect it is distinguished from temperance and fortitude, which are cardinal virtues, but regard the subject himself, not other

men. - Justice inclines us to render to each one his own right; for he cannot be called just who inflicts injustice even on one person; and constantly, or perpetually; for it does not suffice that someone wish to observe justice for an hour or a day, or only in some business, but it is required that he wish to cultivate it always and in all things.

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(d) According to equality, so that as much is rendered as is owed; e.g., if you owe one hundred coins, you must render one hundred, neither more nor less: if less is rendered, justice is not preserved, since something owed remains; if more, the excess belongs not to justice, but to charity or liberality.[1]

[1] Hence justice properly so called especially includes two things: alterity or distinction of persons, since it is a virtue toward another, and the rendering of what is owed according to equality. - Concerning the virtues annexed to justice, the reader will find a few things below, p. 438.

8. Corollary. From this definition the distinction between justice and the other cardinal virtues already appears; for prudence resides in the intellect, and in any business dictates what is fitting according to right reason; fortitude moderates, rules, and strengthens the irascible appetite according to the prescriptions of reason; temperance restrains and moderates the concupiscible appetite with respect to the pleasures of taste and touch. Prudence indeed orders man both to himself and to another, but temperance and fortitude only to himself. Therefore those virtues differ from justice, which is situated in the will, and inclines it to render to another his own.

9. Justice likewise differs from charity. Each indeed is a virtue toward another: but charity regards other men as brothers, who share the same human nature and the same supernatural life, pursue the same end by the same means, and are members of the same mystical body; and therefore it rests upon the intimate union of all men; - while justice rests upon the distinction of one man from another, inasmuch as each man, although a member of the human family, is truly distinguished from the other men, has rights proper to himself, and can vindicate them. - Charity is indeed in itself more excellent than justice, since it is a theological virtue; and also more universal, inasmuch as it extends itself to many more things than justice. But when the duties of charity and justice concur, these latter generally ought to precede the former, since they are stricter.

3. Species of justice. Since various divisions are proposed by various authors,[2] we select this one, which seems to us more comprehensive and more logical. Justice, inasmuch as it flourishes among private men, is called particular; as it is between society and its members, or conversely, it can be called social; insofar as it presides over relations among various Nations, it is called international.

[2] Commonly the older Theologians acknowledge a threefold justice: commutative, by which a private person renders to a private person what is owed to him; distributive, by which the Government distributes favors and burdens among citizens with equitable proportion preserved; general, or legal, which inclines citizens to render to the Republic or State what is owed to it.

10. (A) Particular justice is that by which a private person renders to a private person what is owed to him from strict right; therefore it primarily regards the particular good; it is also called

commutative, because it is concerned chiefly with exchanges and various contracts. To this, according to all, certainly belong the conditions enumerated above in the definition of justice.

11. (B) Social justice, as it is here understood, is that by which citizens are ordered to society and society is ordered to citizens, for promoting the common good. It can be threefold: legal, distributive, and vindicative. (a) Legal justice is that which inclines individual citizens to render to society what is owed to it for procuring the common good. This virtue must be found both in the prince or president and in subjects: it inclines the former to command those things which contribute to the common good; the latter to carry them out, e.g., to pay taxes, to perform military service. It is called legal, because it is situated chiefly in establishing and observing laws; also general, insofar as it orders to the common good all acts which it commands.

12. (b) Distributive justice inclines the rulers of society to distribute common goods and burdens among citizens according to the common good and therefore according to the talents, capacities, and merits of individuals. In this matter arithmetical equality cannot be observed, but only a certain proportion, inasmuch as subsidies ought to be proportioned to needs, burdens to capacities, offices to talents, and rewards to merits; otherwise there will be respect of persons, by force of which, in the distribution of goods, attention is not given to that quality of the person which makes him worthy, but to something else, for example, consanguinity, gifts, friendship, and other things of this kind.

(c) Vindicative justice is that which moves superiors to inflict due and fitting punishments upon guilty subjects. This indeed is most closely allied to distributive justice, but nevertheless seems to be distinguished from it in this, that it immediately regards the reparation of the injured order.[1]

[1] According to some, it is referred to distributive justice, because it inflicts punishments proportioned to offenses; according to others, to legal justice, inasmuch as the common good requires that superiors punish crimes; according to some, to commutative justice, because superiors are bound from a quasi-contract to punish the guilty.

13. It is controverted whether social justice is a species of justice properly so called, or a special virtue analogous indeed to commutative justice, but nevertheless truly distinct from it. (a) According to Lugo and not a few others, commutative justice alone attains the perfect notion of justice, because it alone is perfectly toward another, inasmuch as it exists between terms equal and independent of one another; - it alone preserves perfect arithmetical equality; - it alone obliges to restitution when it has been violated; but social justice, since it exists between society and its members, regards terms not wholly distinct nor independent; - it preserves only proportionate equality; - nor does it bind to restitution, except when commutative justice is at the same time injured.[1] (b) Yet not a few[2] contend that these differences are accidental rather than essential, and therefore that legal and distributive justice truly share in the notion of justice, and are, as it were, the lowest species of this virtue. - The former opinion seems to us more probable.

[1] Lugo, disp. I, n. 47-54; Crotty, n. 36-85; Cathrein, *Philosophia Moralis*, n. 142; Pottier, diss. II, n. 11-31. - The mind of St. Thomas seems doubtful; for in the body of the article (2. 2., q. 61, a. 1) he indeed teaches that there are two species of justice, distributive and commutative; but in the reply to 5 he adds: "Distributive and commutative justice are

distinguished not only according to one and many, but according to the diverse nature of the debt"; these words seem to signify an essential difference.

[2] Thus Vermeersch, n. 21-25.

14. (C) International justice is that which exists among diverse Nations, and moves them to render to other nations, or to private citizens of other nations, what is owed to them; it therefore embraces the Law of Nations, namely the rules to be observed by various Nations in time of peace or war, the agreements entered into for fostering commerce among different peoples, for defining the rights and duties of citizens who dwell among foreign nations, for determining what is permitted or prohibited in time of war, etc. For Nations can be regarded as moral persons, among whom justice of the true name can intervene, so that even sometimes there may be place for restitution.

In this Treatise there is question especially of commutative justice; nevertheless we shall briefly touch in the course of the Treatise the principal questions which regard social justice; likewise we shall say a few things concerning international justice, where we speak of war.

15. Corollary. From this it is rightly inferred how necessary the virtue of justice is; for if it is observed both by citizens and by States, the rights of private persons and of Nations remain safe and sound, and therefore order and tranquility reign everywhere; but when the rights of citizens or of Nations have been violated, lawsuits, dissensions, and wars soon arise, most hostile to right order and peace,[1] as will appear more clearly from the things to be said below.

[1] Bossuet, *Sermon sur la Justice*, ed. Lebarq, Paris, 1892, t. V, p. 157-190; Card. Perraud, *Les Vertus Morales*, Paris, 1903, p. 35-90.

II. The Nature and Divisions of Right.

Since the object of justice is right, we must explain its nature and species, so that the very notion of justice may be better understood.

[2] St. Thomas, 2. 2., q. 57; Lugo, disp. II, n. 1-9; Soto, l. III, q. I; Lessius, l. II; Carriere, n. 8-19; Crotty, n. 123-176; Pottier, disp. I; Vermeersch, n. 4-11; Marres, t. I, Preliminary Notes.

16. 1. The multiple acceptation of the word right. By this name is signified: (a) that which is just, or is owed to someone; thus it is said: to render to someone his own right, to violate the right of someone;

(b) the rule by which the right to be rendered to someone is determined; in this sense right is divided into natural, divine, canonical, written or non-written; hence, by extension, the whole complex of laws, e.g., the science of law, the *Corpus juris*, etc.;

(c) the sentence of a judge, by which right is authentically rendered to someone, e.g., to pronounce judgment; and consequently the place in which right is pronounced;[3]

[3] Thus Cicero, lib. I, *De Oratore*, says: "To fly about in the forum, to remain in the court."

(d) the moral faculty of having, doing, or exacting something, e.g., the right of property, the right of preserving one's reputation, etc. Concerning right, understood in this last sense, we are chiefly

treating; for this is the primary and chief notion of right: for nothing is owed to another unless that other has a right, or legitimate faculty, of obtaining or possessing something.

17. 2. The true notion of right.[4] Right, inasmuch as it is a moral power, can scarcely be defined, because it is one of those notions which seem clearer than the definition itself; nevertheless it can be described: a moral and inviolable faculty of having, doing, or exacting something. - It is called:

[4] That false notions of right are handed down by many philosophers, both ancient and modern, is clear from those things which we said in the Treatise on the Last End, where we treated of the norm of morality, n. 21-64; for those who are unwilling to place the norm of morality in the wisdom and will of God say that right is nothing else than force, - or private or social utility, - or human liberty itself, which can perform whatever does not harm others. Cf. Fouillee, *L'idee moderne du droit*, Paris, Hachette, 1904.

(a) a moral faculty; therefore it is not a mere fact (in French, *le fait*), without any relation to the rule of morals; nor a merely physical power, which is sometimes opposed to right; for here there is no question of physical power (in French, *force*), by which obstacles of material forces are overcome or an operation is validly accomplished; but of a moral, or legitimate, power, which is according to nature and laws, and can be licitly exercised, according to the dictate of right conscience;

(b) and inviolable, i.e., which cannot licitly be prevented by others; for right in one person carries with it an obligation in others not to impede the exercise of this right; and which therefore subsists, even if its exercise is prevented by force;

(c) of having, doing, or exacting something; by these words the object of right is declared, which can especially be threefold: the power of having external things as one's own; the power of doing something, by exercising one's own faculties; the power of exacting something, that is, of obtaining from others either that they furnish something useful to us, or that they abstain from those things which would be harmful.[1]

[1] Concerning the notion of right and duty and the comparison between the two, see P. Janet, *La Morale*, 5th ed., Paris, 1898, p. 266-281.

18. 3. The divisions of right. Passing over the right of jurisdiction, which belongs to the prince for ruling subjects unto the good of the subjects, we are treating only of right which is for one's own advantage.

(A) Right is commonly divided into strict and non-strict:

(a) Strict, or perfect, right is that which is determined in itself and with respect to persons, and can be exacted by way of coercion, for one's own advantage. Suppose, for example, that one hundred coins are owed to me by Peter, by force of a contract of sale: I have a strict right of exacting from a determinate person, namely Peter, a determinate thing, namely one hundred coins, by legal coercion,[2] that is, by recourse to the tribunals. To this strict right there corresponds in others a strict obligation, or an obligation of justice. This is right properly so called, about which the virtue of justice is concerned.

[2] Coercion can be diverse according to diverse circumstances: where no public authority exists, or in a case of necessity, when recourse cannot be had to magistrates, private persons can use force to vindicate their rights, as will be explained below; but in the social state, and outside the case of necessity, it is permitted to use only legal coercion.

19. (b) Non-strict, or broad and imperfect, right is that which is not sufficiently determined with respect to the thing or the person, so that it cannot be exacted by way of coercion; such is the right to alms, with which the poor who are living in common necessity are endowed: for although the rich in a general way ought to give something from their superfluous goods to the poor, they are not bound to give to this poor person, nor to bestow such a sum of money; therefore this poor person cannot exact this sum of money from this rich man. Hence such a right can be compared with strict right only analogically.

20. Lugo[1] declares in this way the reason why strict right is so determined that it can be exacted by way of coercion: this right is to be placed in a moral preference by which, in the use of such a thing, this man ought to be preferred to others; namely because, on account of the peculiar connection which the thing has with him, the whole of it ought to be referred and ordered to his utility; this ordering indeed is chiefly signified when something is called mine or yours; e.g., if a hunter has caught a wild animal, this has a special connection with him, so that the captor can say: this wild animal is mine, because I first occupied a thing belonging to no one.

[1] Lugo, disp. I, n. 5-6.

21. (B) But the strict right of property is subdivided into *jus in re* and *jus ad rem*. (a) *Jus in re* is that which someone has in a determinate thing already his own. For this three conditions are required:[2] that the thing actually exist; - that it be determined in the individual; - that it be bound to someone by a legitimate title, by force of which he can say: this thing is mine. He who has *jus in re* can vindicate it wherever it is, and by whomever it is detained; therefore to him belongs a real action, which directly touches the thing itself.

[2] Other conditions can indeed be required by positive law; but by natural law the aforesaid suffice.

22. (b) *Jus ad rem* is that which someone has so that a thing may become his own. For this two things are required: that the thing be owed from a title of justice; - that the title, by force of which it is owed, not be such that the thing is actually attached to us for our own advantage; which occurs whenever one of the three conditions stated above is lacking.

The matter is made clear by an example: if someone has bought a horse and has paid its price, he has *jus in re* in it, so that he can vindicate it from whomever it is detained; but if Titius has promised Caius that he will sell one of the four horses which he has, Caius indeed has *jus ad rem*, inasmuch as he can exact from Titius that he sell the promised horse, but he cannot seize one of these four horses wherever he may find it.

23. (C) Again, *jus in re*, which is also called dominion,[1] is divided into full and semi-full: (a) the former can be defined as the exclusive right of enjoying and disposing of a thing as one's own, for one's own advantage. It is called exclusive, inasmuch as it involves the faculty of forbidding to others whatever could disturb the owner in the use or disposition of his thing; of enjoying, i.e., of using the thing itself and its fruits for one's own utility;[2] and of disposing, i.e., of destining it to all uses, of giving, selling, exchanging, etc.; of a thing as one's own, so that certain possessions which do not imply dominion may be excluded; thus a depositary detains a deposited thing, but not as his own.

[1] Certain persons by the name of dominion understand only full *jus in re*; but more commonly dominion and *jus in re* are taken in the same sense, and each is divided into full and semi-full.

[2] Some add, with those learned in Roman law, that dominion also implies the right of consuming or destroying (*jus abutendi*), that is, of destining a thing to a use which cannot be renewed, or of destroying it; which indeed, understood in this sense, is legitimate. But not a few today by the right of consuming or destroying also signify the faculty of dissipating useful goods; in which sense he who abuses his own thing indeed does not sin against justice, but injures charity, prudence, or other virtues.

In the definition itself we purposely do not add the words "for every use not prohibited by law or agreement," which are read in the French Civil Code (a. 544), and in certain authors; for, even if someone violates some law, he does not by that fact injure justice, nor is he bound to restitution; thus, for example, a minor selling certain things from his goods, without the legal forms, acts illegitimately, but not unjustly. Nevertheless all admit that the exercise of some right can be restricted by law; but this ought not to be included in the definition, since the same restriction is extended to all things.

24. (b) The latter, i.e., *jus in re*, or semi-full, or imperfect, dominion, is that which does not embrace both faculties of enjoying and disposing, but only one or the other, i.e., the faculty of enjoying only, or of disposing only. He who has the right of enjoying, without the right of disposing, is said to have indirect, or useful, dominion (*la jouissance*); he who is able only to dispose of a thing, but not to enjoy its fruits or advantages, has direct dominion, or bare ownership (*nue propriete*).

25. Corollary. The right of property, of which we have treated, differs from eminent dominion, which belongs to the prince for disposing of the things of citizens in certain cases, when the public good requires it. For such a power: (a) is not exercised for one's own good, but for the common good; (b) insofar as necessity demands it; (c) with equivalent compensation given, and without respect of persons; and therefore it is rightly referred to the power of ruling, which sometimes demands that the private good yield to the common good.

26. Division of the matter. Those things which regard the virtue of justice are set forth in a twofold part:

I. concerning Justice itself;

II. concerning Contracts.

For contracts are nothing else than one of the modes by which the right of dominion is acquired, and therefore they are referred to the first chapter concerning Justice, as will be explained below; but, since the questions concerning Contracts are manifold and intricate, it is necessary to treat of them in a special part.

27. In this first part, we shall treat:

I. Of the existence of the right of property, or dominion;

II. Of the violation or injury of right;

III. Of the reparation of injured right, or of restitution.

The reason is that in the first place it must be weighed whether and what rights exist; then, since these rights are often injured, it must be explained in how many ways they are violated; finally, since violated right must be repaired, last of all restitution must be discussed. We declare this more fully in the following table.

I. Of the existence of right.	**Of the object of right.**
	Of its subject.
	Of the modes of acquiring right.
II. Of the violation of right.	Preliminary matters concerning crime or injury.
	Of injury concerning the goods of the body.
	Of injury concerning the goods of the soul.
	Of injury concerning goods of fortune.
III. Of the reparation of injured right, or restitution.	Of the roots of restitution.
	Of the manner of making restitution.
	Of the causes excusing from restitution.

Part I — Chapter I: On the Existence of Right

On the Existence of Right.

28. State of the question. 1. In Natural Ethics, and also in the Treatise on the Last End, n. 25, it has already been demonstrated that God is the primary font of right: for He is the supreme Creator and Lord of all things, and possesses all rights in Himself. Now, when He creates certain beings, He at the same time assigns duties and rights to them. Since He Himself is the ultimate end of all beings, the duty of tending toward God as ultimate end is incumbent upon all; but they cannot fulfill this duty unless at the same time they have the right not only of existing, but also of exercising their faculties. Therefore, if there is question of the priority of right and duty, these things can be established: (a) if the rights and duties of men are compared in relation to God, right in creatures primarily flows from duty, inasmuch as creatures ought to serve God before they can vindicate any rights for themselves. Nevertheless rights often extend more widely than duties; for, once it is posited that the right of exercising our faculties inheres in us, we can legitimately do certain things to which we are by no means bound; thus, for example, besides the knowledge of divine and human things which we are bound to acquire for salvation, we can know many other things.

(b) But if the rights and duties of men among themselves are compared, they are indeed correlative, inasmuch as some duty corresponds to some right; nevertheless in the same order right is logically prior to duty, since duty has been instituted in favor of right: for if I have a right of doing something, by that very fact the duty is incumbent upon other men not to prevent that right.

29. 2. Sometimes rights and duties seem to be in conflict with one another, e.g., the rights of creditors and debtors, or the rights of debtors among themselves, the rights of owners and workers, etc. The collision is only apparent, since rights and duties flow from one sole font, namely God, and moreover there can be no contradiction in things established by divine ordering. Therefore the question is which right or duty prevails. Now the order of rights and duties must be determined according to the demands of the last end, according to that saying: in all things look to the end.[1] Therefore, in an apparent collision of rights, that right prevails which, other things being equal, is more excellent, or more necessary or useful in relation to the last end. And so a more certain right prevails over a more uncertain right, since it is more necessary; a particular right, other things being equal, yields to a universal right, or to the public good, since this is more excellent or more necessary.

[1] This is treated in the Treatise on the Last End, n. 31.

30. 3. Division. In this chapter we shall treat: 1. of the object of right, weighing what rights men have or can have; 2. of the subject of right, namely who can acquire rights; 3. of the various modes of acquiring rights.

Of the object of right.	**Of internal goods or goods closely pertaining to the person.**
	Of external goods of fortune.
	Of servants.
Of the subject of right.	General principle.
	In particular: of children under paternal power.
	Of wives.
	Of clerics.
	Of moral persons.
Of the modes of acquiring right.	Of occupation.
	Of accession.
	Of prescription.
	Of contracts, concerning which in the special Treatise on Contracts.
	Of testaments.
	Of succession.

Art. I. On the Object of Right.

31. There are three kinds of goods about which the dominion of man can be exercised: 1. the internal goods of man, or those closely pertaining to his person; 2. the external goods of fortune; 3. services to be furnished by other men.

§ I. On Internal Goods or Goods Closely Pertaining to the Person.

Goods of this kind are: 1. the goods of body and soul; 2. reputation, which has been acquired by good works; 3. the products of one's own talent.

I. On the Goods of Body and Soul.

32. The goods of body and soul are of a twofold kind: some which are not distinguished from man himself, such as life (soul and body), the faculties of the soul, and the members of the body; others which are distinguished from man himself, inasmuch as they proceed from him and from his faculties, although they inhere in him, such as actions (not their external effects), both natural and supernatural, and habits, whether acquired or infused. - Concerning these goods let the following propositions be given.

33. Thesis: Man has useful dominion, but not direct dominion, over the internal goods which are not distinguished from himself.

The first part is proved (as to useful dominion). It is certain. For man has all those rights which God has granted to him; but God, by the very fact that He created and conserves man, and assigned to him a supernatural end, granted to him useful dominion over the goods internal to him, as altogether necessary for attaining his end.

The second part is proved (as to direct dominion). Thus commonly. The right of disposing of his own life cannot be attributed to man unless he has received it from God, either absolutely, so that he can use it in all cases and at will, or relatively, that is, for certain determinate cases and grave causes. But neither can be said to have been granted to man by God.

1. Not an absolute right. For the primary end of divine creation is that man promote the glory of God, and the secondary end is that he perfect himself and serve other men; and to obtain this end God assigned to man duties from the execution of which the whole harmony of the moral world ought to result. But that end would be endangered if it were permitted to each one at will to leave the course of life, since the possibility of greater perfection would vanish and society would suffer grave harm.
2. Not a relative right. For the express consent of God is lacking, nor can tacit consent be invoked; for, from the things to be said in nn. 297, 298, 299, 300, where we speak of suicide, the reasons alleged have no force.

Therefore man cannot, whether at will or for grave causes, dispose of internal goods which are not distinguished from himself.

Hence it is seen how the texts are to be interpreted: "I will kill and I will make to live,"[1] "For You are, O Lord, He who has power of life and death,"[2] and especially the precept of the Decalogue: You shall not kill.

[1] Deut. XXXII, 39.

[2] Wis. XVI, 13-14.

34. Thesis: Man has full dominion over internal goods which are distinguished from himself.

For from the things said in the preceding proposition, man has useful dominion over his faculties, whose actions and the goods acquired by them can be regarded as fruits; but each one has full dominion over those things which he acquires by his own industry, or produces by his own activity: therefore man can dispose at will of internal goods which are distinguished from himself, without violating justice toward God.

With regard to supernatural habits, it must be noted that they are infused gratuitously, and therefore that they and their acts are less perfectly subject to the dominion of man, although it cannot be said that a man is unjust who disposes of them, e.g., by losing them through sin; otherwise it would have to be said that he who has lost grace is immediately bound by justice to penance (which no one asserts).

35. Corollary. Princes do not directly have true dominion over the life or members of subjects, but indirectly, inasmuch as, from the right of jurisdiction, they are able to dispose of these for the public good, insofar as they act in the place of God.

(A) Not directly indeed, because the right of life and death directly belongs to God alone, from the things said; nor can it be proved that it was directly delegated to Princes.

Nevertheless indirectly they enjoy this privilege; for, by force of the power of jurisdiction with which they are endowed, they can do all those things which the public good truly demands; but the common good of society sometimes requires that the Prince be able to dispose of the life and members of subjects; thus, in the case of a just war, he can order soldiers to expose their life in order to defend the rights of the fatherland; likewise he can punish certain criminals with the death penalty, so that others may be deterred from similar crimes, when the public good requires it. Then he acts as bearing the place of God: "For he does not bear the sword without cause: for he is the minister of God, an avenger unto wrath against him who does evil."[3]

[3] Rom. XIII, 4.

II. On the Good of Reputation.

36. Principle: Man has direct and useful dominion over his own reputation, although limited. It is certain as to useful right; it is commonly held as to direct dominion.

The first part is proved, namely that he has direct and useful dominion, inasmuch as we can not only use a good name for our own advantage, but also renounce it for a higher good.

For we have not only useful but also direct dominion over those things which we acquire by our own labor, or legitimately obtain from those who have acquired the same things by their own labor; but so it is with good reputation: for we acquire or increase this by our own labor, namely by the upright exercise of our faculties; or we have received it from our parents by quasi-hereditary right; therefore we have true dominion over reputation. - Therefore we can protect it against unjust aggressions by our neighbor; and when taken away, reclaim it before judges as our own thing. - This indeed will appear even more manifestly if it is observed that reputation is truly estimable by price: for he who is engaged in commerce, or in an art or industry, conducts his affairs with a more prosperous outcome the more distinguished the reputation he has acquired for himself; therefore injury to reputation often also injures fortune, and therefore can oblige to pecuniary compensation.

Moreover, since reputation is truly ours, we can permit the loss of it in order to obtain a greater good, e.g., to cultivate humility, to seek counsel, to restore reputation to another, etc.; for, between two goods, it is permitted to choose the more excellent.

37. The second part is proved. Nevertheless that right is limited by a manifold obligation, namely (a) by duties toward oneself, inasmuch as it is no more permitted to defame oneself without cause than to dissipate goods of fortune, nor to sin or falsely impute sin to oneself for the sake of humility: for evils must not be done that goods may come. Hence rightly it is read in Scripture:[1] "Have care of a good name: for this shall continue with you more than a thousand precious and great treasures; the number of days of a good life is limited, but a good name shall continue forever." (b) By duties toward the neighbor: inasmuch as we cannot bring infamy upon ourselves if the infamy redounds upon the neighbor, e.g., upon one's family, convent, or community, or upon an accomplice; or also when reputation is necessary to someone for furnishing to the neighbor a duty which is owed to him by strict right, as it is necessary to a bishop or pastor for rightly fulfilling his duties; finally, when it is required for furnishing a duty which is prescribed not by justice, but by charity. In the first and second

cases there is injustice, because of harm unjustly inflicted upon the neighbor; in the third, charity is injured.

[1] Ecclus. XLI, 15-16.

III. On the Products of One's Own Talent.

38. Besides the goods of body and soul, and also one's own reputation, man is able to make his own the products of his talent. Under this name come: books published by authors; paintings or other artistic works; various inventions by which the industrial arts are advanced, etc.

[1] Lugo, disp. XXVI, n. 171; Carriere, n. 55-62; Marres, l. I, n. 23-25; Lehmkuhl, n. 904-905; Meyer, II, n. 213-216; Ball. P., n. 53; Vermeersch, n. 246-253.

39. 1. What is certain. Now all concede that any man has full dominion over the fruits of his talent, so long as he has not made them public property: for nothing can be more proper to us than what we acquire by the labor of our own mind; and indeed, if external things bear fruit for the owner, much more do internal faculties, which immediately flow from our essence. Therefore he who would steal the manuscripts or inventions of another, and publish them, without the permission of the author, would sin against justice and would be bound to repair damages; for he violates the double right which belongs to the author, that the work written by him not be published against his will, and that the profit to be received from it not be diminished.

For the same reason, he who would take down in writing sermons or lectures heard, and make them public property, without the explicit or tacit permission of the preacher or professor, injures justice and is bound to restitution: for although he can use these for his own use, he cannot publish the same things. Nevertheless implicit permission suffices, which rests upon legitimate custom: thus many sermons are commonly published in periodicals without the explicit consent of the speaker.

40. 2. What is disputed? - But when a book has already been printed, or an invention has been made public property, it is controverted whether by natural right the author or inventor is able to prohibit others from committing the book to the press again or multiplying the thing invented. (a) Some deny this, because a work once published now becomes a common good, which can licitly be occupied by all. (b) Theologians, however, commonly affirm it; for natural right forbids anyone to be despoiled of the fruits of his own labor; but the author of a book or invention could not receive the fruit of his labor, if it were permitted to each one to print and sell anew a book published by another, or to spread the inventions of others, without any compensation; therefore natural right forbids this.

41. 3. Practical conclusion. Nevertheless all admit that nothing certain is defined by natural right as to the time during which an author or inventor can exclusively enjoy his own works. Therefore it is necessary that positive right intervene to determine the matter more accurately. This in fact has been done among all cultivated Nations; and since laws concerning literary and industrial property are determinative of rights, they oblige in

conscience, in justice and under the burden of restitution. Likewise, where international agreements exist, these have the force of law.

Now an agreement of this kind was entered into on September 9, 1886, among the principal cultivated nations, by force of which authors who have published books according to the law in force in their own region enjoy the right of property in all regions which have adhered to this agreement.

42. In France, writers who have sent two copies of the books published by them to the legitimate authorities enjoy the exclusive right of selling these throughout their whole life, and their heirs for fifty years.[1] - With regard to inventions, those who, according to the forms determined by law, have obtained the diploma which is called *Brevet d'invention*, can enjoy the right of property for fifteen years.[2]

[1] Lyon-Caen and Delalain, *Lois francaises et etrangeres sur la propriete litteraire et artistique*, Paris, 1889-1890; Pouillet, *Traite theorique et pratique de la propriete litteraire*, Paris, 8th ed. 1889; Supplement for France, p. 1*-4*.

[2] Pouillet, *Traite theorique et pratique des Brevets d'invention*, 2nd ed., Paris, 1879; Supplement for France, p. 4*-7*.

We shall set forth in the Supplement the civil law in force among other nations.

§ II. On Dominion Over Goods of Fortune.

43. Man cannot protect and preserve life unless there inheres in him the right of having certain external goods as his own, by which he can enjoy what is necessary for the support of himself and his own. We shall speak: 1. of the right of possessing external goods; 2. of the various kinds of goods, and especially of semi-full dominion.

Sect. I. - On the Right Itself of Possessing External Goods.

44. Since the right of private property is today attacked by many, namely by communists, socialists, and collectivists, we shall: 1. briefly outline the history of these errors; 2. propose the Catholic thesis; 3. solve the principal arguments of adversaries; 4. suggest certain means for preventing socialism.

I. The History of Socialism Is Outlined. — Preliminary Matters.

45. (A) It is scarcely possible to define socialism accurately: for it embraces so many and such diverse systems that a definition which fits one system by no means belongs to the others. - Nevertheless it can be described as the complex of systems which tend toward this, that they subvert the present order of Society, and substitute for it another order, in which the right of dominion is exercised principally, if not exclusively, by the State or Commonwealth itself.

[1] E. de Laveleye, *Le Socialisme contemporain*, 10th ed. Paris; J. Bourdeau, *L'Evolution du Socialisme*, Paris, 1901; Winterer, *Le Socialisme contemporain*, 4th ed. Paris, 1904; Leon de Seilhac, *Le Monde socialiste*, Paris, 1904; L. Garriguet, *Introduction a l'Etude de la Sociologie*, t. II, Paris, 1901; R. T. Ely, *French and German Socialism in Modern Times*, New York, 1883; Rae, *Contemporary Socialism*, 2nd ed., London, New York, 1898; E. Jager, *Der moderne Socialismus*, 1873; Cathrein, *Der Socialismus*, ed. 7, 1898; E. d'Eichthal, *Socialisme, Communisme et Collectivisme*, 2nd ed. Paris, 1901; V. Pareto, *Les Systemes socialistes*, Paris, 1902; M. Bourguin, *Les systemes socialistes et l'evolution economique*, Paris, Colin, 1906.

There are three forms of socialism: (a) communism, which wishes all goods, even those destined for consumption, to be common; (b) collectivism, which distinguishes two kinds of goods: some, which are reserved for producing new things (e.g., lands, instruments of labor, etc.), are to be retained by the State or Commonwealth; others, which are destined for consumption, remain under the dominion of private persons; (c) State socialism, which, while it retains private dominion with regard also to many means of production, advocates the universal and continuous intervention of the State in all affairs, and too greatly restricts the activity and rights of private persons.

Anarchism differs from socialism, for it intends the overthrow of the whole of society.

46. (B) Among the Pagans, certain traces of communism are found: practically among the Spartans in the time of Lycurgus; theoretically in Plato, who, in the treatise *On the Republic* and *On the Laws*, proposes communism as a means for establishing concord among citizens.

In the first centuries of the Church, certain Gnostics, and also Apostolics, and afterward in the Middle Age the Waldenses and Albigenses, advocated a certain community of goods, relying on the examples of the primitive community of Jerusalem; which errors the Anabaptists and a few sects of Protestants renewed.

The system of Plato was again proposed by Thomas More in his *Utopia*, yet polishing it and cleansing it from many vices, especially from the community of wives.

But various systems of this kind had scarcely any moment in minds; and modern socialism took its origin only in the middle of the eighteenth century.[1]

[1] A. Lichtenberger, *Le Socialisme au XVIIIe siecle*, Paris, 1895.

1. The Principal Causes of Modern Socialism.

47. A threefold cause of this system can especially be assigned: namely an industrial, philosophico-political, and religious revolution.

[2] Leo XIII treats of these things briefly, but profoundly, in the proemium of the Encyclical *Rerum Novarum*, May 16, 1891.

(A) The industrial revolution, which began around the middle of the eighteenth century, must be ascribed to the invention of more perfect instruments in manufactured things. For since only the rich are able to acquire these new inventions, by that very fact there are found two classes of men plainly distinct: capitalists, or owners, who possess the instruments of labor; and proletarians, or workers, who labor not for themselves, but for others. Once this is posited: (a) workers depend entirely on the owners for whom they labor; formerly, after some years, they could acquire for themselves the instruments of labor and so become independent; but today for the most part through their whole life they must work in the workshops of others, and can be dismissed at the nod of the owners.

Moreover, by the aid of machines, not rarely more goods are produced than can be sold: from this it happens that workers are dismissed, at least for a time, and suffer want. From this they burn with anger and indignation against the owners.

48. (b) From this it also follows that relations between owners and proletarians have been changed: for he who is over many thousands of workers cannot care for each one in the same familiar and paternal manner as he who is over only a few; therefore if difficulties and dissensions arise, they cannot so easily be settled, but rather are increased, especially since among the workers there are some who not rarely impel their companions to rebellion.

(c) From this also the condition of capitalists is separated more and more from the lot of workers: for the latter, generally receiving a scant wage, can scarcely support themselves and their own; while the former, hiring a great number of workers, and receiving some profit from each of them, become very rich and often indulge in luxury; hence envies, desires, and dissensions are born.

49. (d) Moreover, the ancient guilds of artisans having now been destroyed, proletarians have been handed over, solitary and defenseless, to the inhumanity of owners; new associations have indeed been established, but by no means tempered by religion, which attempt to render the condition of workers better by the overthrow of the social order and by the diffusion of socialism.

50. (e) Finally, domestic life, which formerly was wont to furnish consolation to workers, is today much disturbed; for since the husband, wife, and children are often compelled to labor in various workshops, they can live together only for a few hours; the wife can hardly attend to the domestic matter and to the education of the little ones; the husband, finding a cold and filthy house, and badly cooked foods, gradually deserts his own hearth and frequents taverns.[1] Thus the family is overthrown, and workers, enjoying no domestic happiness, dream of destroying the whole social order.

[1] Concerning the miserable condition of workers, among others, the following have written: Villermé, *Tableau physique et moral des ouvriers employes dans les manufactures*, Paris, 1840; J. Simon, *L'ouvriere*, 1861; Comte d'Haussonville, *Salaires et miseres de femmes*, Paris, 1900.

51. (B) The philosophical and political revolution, which, under the leadership of J. J. Rousseau, pervaded all Europe. For he taught (a) that man is by nature essentially good, and that he was made evil only by the present social order of things: take away private dominion, take away mine and yours, and immediately man will betake himself to a better course; (b) that all men are by nature equal and enjoy the same rights; from which it is logically inferred that the right of property must be abolished, as necessarily favoring excessive inequality among men.

52. The French Revolution partly made these ideas its own, by proclaiming the rights of man and keeping silent about his duties, by establishing the political equality of all citizens, and by patronizing unbridled liberty; from this certain men, with Babeuf,[1] deduced the community of goods; for equality is vain, and liberty vain, unless all things are common.

[1] In order to obtain perfect equality, Babeuf wished all goods to be possessed by the State, all citizens to be compelled to labor, and the fruits of labor to be distributed according to the necessities of each one. Cf. Espinas, *La Philosophie sociale du XVIIIe siecle et la Revolution*, Paris, 1898.

53. (C) Finally, the religious change which took place in many owners and workers; for unbelief, which in the eighteenth century had invaded the minds of many, began to increase more and

more. Now, once faith in the other life had been taken away, or at least greatly diminished, each one desired to obtain an earthly paradise in this life, by indulging in pleasure.

(a) Not a few owners, whose desires are no longer restrained by the bridle of religion, not rarely regard workers as slaves, or instruments of production; they use and abuse them in order to acquire riches more quickly, imposing more work than their strength can bear, and giving a wage which scarcely suffices for food.

(b) On the opposite side many workers, who no longer expect an eternal reward, often indulge in drunkenness and lust; and, since the wage furnished to them is unequal to acquiring the pleasures which they desire, they rebuke capitalists as guilty of injustice, and long to divide their spoils among themselves.

2. The Historical Evolution of Modern Socialism.

54. It is permitted to distinguish three principal phases in the evolution of socialism: the first, formative and utopian (1820-1850); the second, more scientific (1850-1873); and the third, more political.

55. (A) In the first period, more or less utopian theories were devised, and certain experiments of communism were attempted, but without a happy outcome.

(a) In France, Saint-Simon[1] (1760-1825) wished to establish a new form of society, in which industry organized by science would completely prevail; he taught that the whole value of things flowed from labor as from its proper and sole font, and therefore that workers were to be held in the highest esteem, and that industry, as the most excellent work of religion, was to be fostered and established under the paternal rule of a certain priestly hierarchy. Wherefore his disciples, Bazard, Enfantin, and others, judged that the right of inheritance was to be abrogated, and that goods were to be distributed according to the measure of merit; from this, gradually, private dominion and the family would vanish; but the fruits of labor would be divided according to the works and merits of each one; in place of marriage, free union of the sexes was to be permitted.

[1] Hubbard, *Saint-Simon: sa vie et ses travaux*, 1857; Weill, *Saint-Simon et son oeuvre*, Paris, 1894; Charlety, *Histoire du Saint-Simonisme*, Paris, 1896; P. Janet, *Saint-Simon et le Saint-Simonisme*.

56. (b) A little later, Charles Fourier[2] (1772-1837) advocated a certain form of organized communism: families were to coalesce into economic societies, called phalanxes, which would not exceed two thousand persons, and would live together in a spacious building, namely a phalanstery; any resources possessed by families would form a common fund. In each phalanx, agriculture, various crafts, and also liberal arts would be exercised, according to the talent and faculties of individuals, under the leadership of some overseer: all, even the lazy, would receive the necessities of life; but the industrious would obtain something besides, according to each one's merit. Several phalanxes would form some series, and the series multiplied throughout the world, under the rule of a supreme president (omniarch), would tend toward the common good of the whole human race; and thus universal harmony would reign throughout the earth. - An experiment of this system was made in the village of Conde-sur-Vesgre, but it had an unhappy outcome.

[2] Ch. Fourier, *Traite de l'association domestique-agricole*, 1822; *Le nouveau monde industriel*; *Theorie des Quatre mouvements*; Ch. Gide, *Oeuvres choisies de Fourier*, preceded by a Notice, Paris, 1890.

57. (c) E. Cabet proposed a more radical communism in the work entitled *Voyage en Icarie*;[1] according to him, all goods would be placed under the dominion of the Republic, individual citizens, led by brotherly love, would labor with equal spirit, and the fruits of works would be divided equally among the members of the community. He himself indeed wished to preserve the family and marriage; but his disciples soon preached free union. They attempted to bring his system into practice in the region of Texas, in the United States of America; but after some months the matter had an unhappy outcome.

[1] Cf. Ely, *Socialism in France*, p. 39-52; Malon, *Histoire du Socialisme*, p. 163.

58. (d) Louis Blanc proposed a mitigated form of communism; he contended that there is inborn in every man a right to labor, and therefore that national workshops were to be established, in which work would be divided according to the strength of each one, but the fruits according to the necessities of each one; wherefore private dominions would gradually have to be abolished, and the State would become the sole owner of all things.

59. (e) Proudhon[2] (1809-1865) defended a system not unlike anarchism, declaring that property is nothing else than theft, that the State must be abolished, and that every authority must be removed from the midst. Nevertheless he retains property under the name of possession: namely, citizens will be able to possess and transmit to heirs all those things which they are able to use personally; the rest must be left to others. But the fruits of labor will be divided according to the time consumed in working.

[2] Proudhon, *Qu'est-ce que la Propriete?* Paris, 1840; *Creation de l'ordre dans l'humanite, ou Principe d'organisation politique*, 1843; *La Justice dans la Revolution et dans l'Eglise*; *Interet et Principal*, 1849; Bourgin, *Proudhon*, Biblioth. socialiste, 1901.

(f) In England, Robert Owen,[3] a supporter of mitigated communism, attempted certain experiments of communistic association; in Scotland he established a cooperative society of workers with sufficient success, but the properly communistic societies which he founded in England and America soon collapsed.

[3] Cf. *The Life of Robert Owen*, written by Himself, London, 1857; J. Rey, *Lettres sur le systeme de cooperation d'apres le plan d'Owen*, Paris, 1828.

60. (B) The second phase of socialism was more scientific, and flourished especially in Germany.

(a) Charles Rodbertus[4] (1805-1875) is regarded as the master of this school; he taught that all economic goods are the fruit of labor, and that they are not to be esteemed at a greater value than the labor by which they were, as it were, created; and therefore that society must gradually be transformed, so that no dominion exist except that which arises from labor itself.

[4] Andler, *Origines du socialisme d'Etat en Allemagne*, Paris, 1897.

61. (b) Charles Marx[1] (1818-1883) succeeded him; he is regarded as the principal teacher of the school, and in the work *Das Kapital* reduced socialist principles to a true system. According to him, capital (i.e., whatever is reserved for the new production of goods) is nothing else than

the fruit of labor unjustly taken away from workers. To demonstrate this, he distinguishes a double value of things: one of use (*valeur en usage*), which consists in the utility of the thing; the other exchange value (*valeur en echange*), which consists in the price which can be obtained for those things.[2] Now he asserts that the sole font of exchange value is the labor expended in producing the thing.

[1] K. Marx, *Das Kapital*, a work translated into various languages; Deville, *Le Capital de K. Marx resume*, 1883; V. Pareto, *Karl Marx*, extracts by P. Lafargue, and critique by Pareto; Rae, op. cit., p. 128-177.

[2] The value of use is that which is determined solely by the needs and desires of an individual at a given moment. Exchange value is the price which one can obtain by selling an object, what is called the current price, or the quotation.

62. This being posited, he argues thus: the capitalist, by hiring workers, buys their faculty of laboring for a determined price; but this price in fact is equivalent to the daily expenses which are required for the support of the workers, not however to the value of the things produced. For they produce more than that which is necessary for their own support, but part of the things produced is retained by the capitalists; thus capital is born and grows by theft. But by the natural law of evolution, capital and industries increase daily, and are converted into monopolies, destructive of all liberty. But the extreme evil carries its remedy with it; for when very few capitalists have appropriated to themselves all the instruments of labor and all riches, then the expropriation of those despoilers will become necessary, and all the means of production will be possessed collectively.

63. In order to break the empire of Capitalists more quickly and efficaciously, C. Marx established the international society of workers (*L'Internationale*), which celebrated international congresses at Geneva, in the year 1866; Lausanne, 1867; Brussels, 1868; The Hague, 1872; but afterward, in 1873, it was broken up because of internal dissensions which arose between C. Marx and Bakounine, the promoter of anarchy.

64. (c) Lassalle[3] defended nearly the same system, and further expounded what they call the iron law (*la loi d'airain*). According to him, namely, in the present economic order, by an invincible necessity of things and as if by an iron law, it happens that wages never long exceed that which is necessary for one's own support and for the propagation of the human species: for if wages are increased, a greater number of children is procreated, and therefore there is a greater influx of workers, and soon, by the ineluctable force of competition, less price is paid to workers; for the more numerous the workers are, the less each one receives; and thus they live in a miserable state, having nothing except what is necessary for life.

[3] Rae, op. cit., p. 92-127; R. Ely, op. cit., p. 189-203.

Engels, Bebel, Liebknecht, Singer, and others propagated the doctrine of Marx; Bernstein softened it a little, but K. Kautsky[1] defends it integrally, whose theories the Congress of Socialists held in Germany in the year 1903 approved.

[1] Bernstein, *Socialisme theorique et Social-democratie pratique*, trans. by Al. Cohen; K. Kautsky, *Le Marxisme et son critique Bernstein*, trans. by M. Martin-Leray, Paris, 1900. - Cf. P. Vialles, *La Scission du Marxisme*, Montpellier, 1900; Winterer, *Le Socialisme allemand et ses dernieres evolutions*, Paris, 1903.

65. (C) The third phase, which began around the year 1873 and endures even to the present days, is more political and practical. (a) Many socialists, namely those called Reformists, understanding that a total change of the economic matter cannot be obtained immediately, prepare the way for the social revolution through successive and progressive evolution. And so they attempt gradually to seize political power, and they propose laws which tend toward this, that they render the lot of workers better, but the condition of capitalists worse, by imposing new burdens and taxes upon them, especially those taxes which they call progressive. They advocate social democracy and State socialism, demanding, for example, that all railways, mines, etc., be possessed and administered by the Government. In order to pursue their ends more efficaciously, they establish associations, both national and international, by which they can resist the federation of capitalists, and spread their theories among workers, indeed also among farmers. (b) Others, however, think that only by violent revolution can the condition of workers truly be made better, by utterly abolishing every distinction between owners and workers; and they strive to prepare it.

66. But today, after the war had ended, which brought so many disturbances into the world, Socialism has grown in many regions:[2] in Great Britain, the guilds of workers which formerly pursued a better condition for workers now tend toward collectivism; in Germany, if one excepts independent socialists and a few communists, most workers favor State socialism; in France, the fight grows hot between seditious and moderate Syndicalism, and daily Christian Syndicalism increases, which promotes the doctrine of Leo XIII concerning the social matter; in Italy seditious syndicalism stirred up not a few disturbances, which Christian syndicalism tries to calm, and to which the nationalists (*fascisti*) oppose force; in the United States of America, moderate syndicalism still flourishes, notwithstanding a few anarchists who, arisen from Russia, attempted to overthrow public order. In one word, the world is restless, and it will not find peace and concord unless it returns to Catholic principles, as Benedict XV rightly declared many times.[1]

[2] L. Garriguet, *Question sociale et Ecoles sociales*, 1922, ch. VIII.

[1] To the bishop of Bergamo, March 11, 1920, concerning the prescriptions of the Apostolic See in the social matter not to be neglected, indeed to be followed most religiously (*A.A.S.*, XII, 109); to the bishops of Venice, Umbria (*A.A.S.*, XII, 290, 292).

67. It must also be noted that many Socialists, especially communists, collectivists, and anarchists, favor atheism and positivism, and reject every cult as superstition, except the cult of humanity.[2] - Likewise they overthrow the foundations of the family, advocating free love and marriages dissoluble at will, and moreover entrusting the education of children exclusively to the State.

[2] In France almost all socialists, except the Reformists, show themselves most bitter enemies of religion, as is clear from their open declarations in the periodical *Le Mouvement socialiste* (Nov. 1902-April 1903). In the other regions they indeed assert that religion is a private matter, which is left to the decision and conscience of each one; but at the same time they contend that by socialism rightly understood religion must be put to flight, just as darkness is dispelled by light. Cf. *Mouv. socialiste*, 1902, pp. 1936, 1943, 1946, 2043, 2045 sq.

3. The Principal Forms of Modern Socialism.

Today there are four principal forms of socialism:

68. (A) State Socialism,[3] which does not wish utterly to remove private property from the midst, but strives to restrict it by handing over to the State the principal means of production, such as mines, railways, the greatest industrial factories, etc., whose revenues the Government will receive and distribute equably among the citizens. Thus many politicians, such as, in Germany, where this system was born and flourishes, Ad. Wagner, Ebert, and those who adhere to democratic Socialism; in France, those who are called radical-socialists.

[3] Cl. Jannet, *Le Socialisme d'Etat*, Paris, 1890, and Bechaux, *L'Ecole individualiste, le socialisme d'Etat*, Paris, Alcan, 1907, set forth and refute this form of socialism; L. Garriguet, *Question sociale et Ecoles sociales*, 1922, ch. X.

69. (B) Agrarian socialism, which H. Spencer first advocated, but afterward rejected,[1] had H. George[2] as its principal patron. He taught that not all means of production must be possessed by the State, but only landed estates, because land, like the sea and air, is not capable of private dominion, but ought to be common to all. But lest public order be taken away, possessors of fields will not be despoiled, but will only pay a tax which corresponds to the price of leasing; and since it is foreseen that this tax will be equal to all public expenses to be paid, the other taxes will be removed from the midst, and therefore there will remain a single tax upon lands (*single tax*). But this system, which at first pleased a few in Ireland and the United States, is today rejected as unequal to solving the social question.

[1] H. Spencer, *Social Statics*, 1851, ch. IX; *Justice*, 1891, Appendix B.

[2] H. George, *Progress and Poverty*, New York, 1883, a work translated into various languages; *The Land Question*, New York, 1898; *The Condition of Labor*, New York, 1891; cf. L. Garriguet, op. cit., ch. XI.

70. (C) Collectivism, or Marxism (above, n. 62), whose doctrine is contracted thus: (a) the State or Municipality ought to retain as its own all the means of production, i.e., lands, mechanical instruments, money, etc.; (b) the use and administration of these means will be in the hands of public power, and the production of things will be so ordered that nothing useless is made, but provision is made for all the necessities of citizens; (c) by public authority the fruits of labor will be distributed among citizens: according to some, according to perfect equality; according to others, according to each one's labor and merit; according to others, according to each one's necessities. The part of the goods which is received by any citizen becomes private property, as acquired by labor; but it must be consumed, and not employed for producing new things, lest capital be established again under another form.[3]

[3] Schaeffle briefly and clearly set forth collectivism in the little work translated into French, *La Quintessence du Socialisme*, Brussels, 1895, and Paris, 1903; cf. G. Renard, *Le regime socialiste*, 2nd ed., Paris, 1898; E. Vandervelde, *Le Collectivisme et l'Evolution industrielle*, Paris, 1921; L. Deslinieres, *Projet de code socialiste*, Paris, Giard et Briere, 1908. Cf. L. Garriguet, op. cit., ch. XII.

71. But concerning the mode of bringing this system into practice the Collectivists do not agree, but are divided into three schools: (a) some, called Possibilists or Reformists,[1] reject violent means, and wish gradually to attain the end by legal means, by handing over the principal

industries to the State under the form of monopoly, by determining by law the price of work to be paid to workers, by promoting universal and obligatory insurances, etc.; and thus they differ little from State Socialism, except insofar as they propose to themselves as the ultimate end the expropriation of private persons. - Allied with these are the Evolutionists, who think that by necessary evolution this social change will come to pass.

[1] A. Millerand, *Le Socialisme reformiste francais*, Paris, 1903.

72. (b) But others contend that a change of this kind can be brought about only by revolution, and therefore by all means they try to obtain public authority, so that they may be able to reduce all the means of production into the power of the Government, and authoritatively receive and divide the fruits.[2] (c) Anarchists, proceeding still further, strive to overthrow the political power of the State, and wish to hand over all the means of production to Municipalities, which will be joined among themselves by an international federation. In order that civil authority may be torn up more quickly, it is expedient to use violent means, sword, fire, and all modern inventions. Thus Bakounine, P. Kropotkine, E. Reclus, S. Faure, A. Cipriani, and the Bolshevists, who first committed authority to popular assemblies, and afterward exercised a true tyranny.[3]

[2] Thus, among others, J. Guesde, *Collectivisme et Revolution*.

[3] The Bolshevists, after the Russian empire had been destroyed, established a tyrannical authority, and in practice rejected anarchy as unequal to ruling the people. Cf. Max Hoschiller, *Le mirage du sovietisme*, Paris, 1921.

73. (D) Seditious Syndicalism,[4] judging that the tyranny of the State and Municipalities is no less to be feared than that of owners, wishes all the means of production to be handed over to the guilds themselves of workers. To attain this end, first provision must be made for the education of workers, indeed the help of experts must be obtained, so that, once the owners have been ejected, the new ordering of industry may at once succeed the former. Meanwhile by all means, even violent means, but especially by cessation from work, both particular and general, the way is to be prepared for a general revolution by which the property of all goods may be transferred to the guilds of workers. When this has been accomplished, the State and Municipalities will be utterly removed from the midst, and the management of public and industrial matters alike will be in the hands of the various municipal, national, and international associations of workers. Then we shall have an earthly paradise, since the rightly ordered production of all things will be able abundantly to provide for the necessities of all. - Even among seditious syndicalists there are divisions, some promoting the bloody means of the Bolshevists, but others proposing less violent means; yet all think that some revolution is necessary.[1]

[4] Syndicalism which strives by violent means to overthrow modern society can be designated thus, and so is distinguished from moderate syndicalism, which strives by legitimate means to render the condition of workers better. Concerning each we shall treat a little more fully in the French language at the end of the work.

[1] G. Sorel, *L'Avenir socialiste des Syndicats*; H. Lagardelle, *Syndicalisme et Socialisme*; E. Pouget, *La Confederation generale du Travail*; Griffueilhes, *Les Objectifs de nos luttes de classes*, especially set forth the system of Syndicalism. Cf. L. Garriguet, op. cit., ch. XIII, and *L'Evolution actuelle du Socialisme en France*.

In the statutes which are proposed to the guilds of workers, these things are read, which clearly declare the end of the association and the principal means:

"Considering that, by reason of the effects of modern industry and of the logical support which power provides to the holders of property and of the means of production, there is a permanent antagonism between Capital and Labor;

"That, by this fact, two very distinct and irreconcilable classes are present: on one side, those who hold Capital; on the other, those who are the creators of all riches, since Capital is constituted only by a levy effected to the detriment of Labor;

"For these reasons, the Proletarians must therefore make it a duty to put into application the axiom of the International: 'The emancipation of the workers can be the work only of the workers themselves';

"Considering that, to attain this end, of all forms of groupings the Syndicate is the best, since it is a grouping of interests coalescing the exploited against the common enemy, the capitalist; that by that very fact it rallies within its bosom all producers, whatever opinion or philosophical, political, or religious conception they claim for themselves;

"Considering likewise that, if the Syndicate confined itself in a regrettable isolation, it would fatally commit - all proportions preserved - the same error as the isolated worker, and that it would thus fail in the practice of solidarity; there is therefore a necessity that all producers first unite in the Syndicate, and, this first act realized, complete the syndical work by causing their Syndicate to adhere to their local Federation or Labor Exchange, and through the channel of their national union to the General Confederation of Labor."

II. The Catholic Thesis Concerning the Right of Property Is Set Forth.

74. Thesis: The private, permanent, and exclusive right of dominion over external goods, even lands, circumscribed by just limits, is legitimate, flows from natural right, and in the present state is morally necessary.

[1] Leo XIII, Encyclical *Rerum Novarum*, May 16, 1891; St. Thomas, 2. 2., q. 66, a. 1-2; Lugo, disp. VI, 1-9; Crotty, I, n. 177-206; Carriere, n. 20-27; Meyer, II, n. 162-177; Castelein, *Instit. Philosophiae*, th. 16; Castelein, *Le Socialisme et le Droit de Propriete*, Brussels, 1896; Vermeersch, n. 195-210; P. Leroy-Beaulieu, *Le Collectivisme*, passim; Capart, *La Propriete individuelle et le Collectivisme*, Namur, 1898; Thiers, *De la Propriete*, Paris, 1848; Bastiat, *Harmonies economiques*, Paris, 1851, p. 212-292; de Wulf, *Le Droit de Propriete d'apres St Thomas*; L. Garriguet, *Etudes de Sociologie, La Propriete privee*; Cathrein, *Socialism*, New York, 1892.

The thesis is explained. (a) A private right of dominion: there is question of dominion not only useful, but direct, belonging to individual men, not however to society; we do not deny that society itself can have some goods as its own, but we contend that private citizens enjoy the same right.

(b) Permanent and exclusive: the right in question can be exercised not only in a transitory manner, but also in a stable manner, and can be transferred to heirs or others; it is so proper that the owner of a thing can exclude all others from its possession.

(c) Over external goods, i.e., whether movable or immovable, whether they are intended for the new production of things, or for use.

75. (d) Circumscribed by just limits: for that right is not absolute, but, like other rights, is limited, and indeed in three ways: in a case of extreme necessity, each one can occupy that which is necessary for his own support (n. 446); sometimes also the common good requires that private dominion be diminished, restricted, or taken away by the State, by force of eminent dominion (nn. 123, 125, 131), which nevertheless cannot be done without a most grave reason and

proportionate compensation; - finally charity demands that the rich bestow something from their superfluous goods upon the poor.[1]

[1] Leo XIII explains this splendidly, Encyclical *Rerum Novarum*: "The foundation of this doctrine is placed in this, that just possession of money is distinguished from just use of money. To possess goods privately ... is a natural right for man ... But if it is asked what the use of goods must be, the Church indeed answers without any hesitation: As to this, man ought not to have exterior things as his own, but as common, namely so that he easily communicate them in the necessity of others ... When enough has been given to necessity and propriety, it is a duty to give what remains to the needy: 'That which remains, give alms' (Luke XI, 41). These are not duties of justice, except in extreme things, but of Christian charity, which indeed there is no right to seek by action at law." - St. Thomas had gone before Leo, 2. 2., q. 66, a. 2; q. 32, a. 5-6. - Cf. Meyer, II, n. 220-223.

76. (e) It flows from natural right and in the present state is morally necessary. For we do not contend that primary natural right always and everywhere demands that private form of dominion; for a state of things can be conceived in which the collective possession of certain goods in some place or in some community would sufficiently provide for the necessities and happiness of men, e.g., among pastoral tribes. But in the present condition of things, in which men commonly love themselves more than the neighbor or society, - and given the state of present-day civilization, in which men cannot live a pastoral life, but need strenuous labor in order to acquire necessities for themselves, - private dominion flows logically from natural right, as will be clear from the arguments set forth below, and therefore is rightly said to be morally necessary for the happiness of citizens and the peace of society. Hence it flows not from civil law alone, as Hobbes, Bentham, and Montesquieu held, nor from the social compact, as Grotius, Puffendorf, Heineccius, and others taught.

77. We indeed admit, according to St. Thomas and many scholastics, that the right of property is derived from the law of Nations; but, when the context and parallel places are inspected, the mind of the Holy Doctor is that the law of Nations of which there is question is not merely positive law introduced by international compact, but a conclusion deduced from natural right and accepted by common sense.[2] Therefore Leo XIII rightly says:[3] "To possess things privately as one's own is a right given to man by nature."

[2] "Those things pertain to the law of nations which are derived from the law of nature as conclusions from principles, as just purchases and sales..." (*S. Theol.*, 1a 2ae, q. 95, a. 4). Cf. Van Gestel, n. XXXVI, p. 82; Pottier, dis. I, n. 19-53.

[3] Encyclical *Rerum Novarum*.

78. The first part of the thesis is proved, namely that the right of dominion is legitimate or licit. This is proved so clearly by Scripture and Tradition that it can be said to be of faith. 1. It is clear from Scripture.

(A) In the Old Testament. (a) God, after He created the first parents, gave them the earth, that they might subject it, and have dominion over the fish of the sea and the birds of the air and all living things; likewise He gave every herb and all trees, which they could use for food.[1] Thus all external goods which are capable of occupation were given indivisibly to the human race, not so that they might remain undivided, but so that they might be possessed in a manner more suitable for procuring the necessities of life.[2]

[1] Gen. I, 28-30.

[2] Leo XIII explains this most excellently, Encyclical *Rerum Novarum*: "But that God gave the earth to the whole human race to be used and enjoyed can in no way be opposed to private possessions. For God is said to have given the earth in common to the human race, not because He wished promiscuous dominion of it among all, but because He assigned no part to anyone to possess, the delimitation of private possessions having been left to the industry of men and the institutions of peoples."

In fact, already the two sons of Adam are said to have possessed their own: for Abel was a shepherd of sheep, and offered to the Lord from the firstlings of his flock; Cain was a farmer, and offered from the fruits of the earth; afterward he built a city, which was his own, and therefore he called its name from the name of his son Henoch.[3]

[3] Gen. IV, 2-4, 17.

79. (b) In the time of Abraham the right of private dominion over goods, whether movable or immovable, already appears manifestly: for he "was rich in the possession of gold and silver." - "But Lot also, who was with Abram, had flocks of sheep, and herds, and tents."[4] At that time pastures indeed were common;[5] but fields and caves were already under private dominion, as is evident from the compact by which Abraham, for four hundred shekels of silver, bought the field of Ephron and the double cave which lay hidden in it, that he might bury the deceased Sara there.[6] - But that the right of dominion was permanent is clear from this, that Abraham himself, Isaac, Leah, and Jacob were buried in the same cave; moreover the bones of Joseph were buried in Sichem, "in the part of the field which Jacob had bought from the sons of Hemor, for a hundred young sheep."[7]

[4] Gen. XIII, 1-2, 5.

[5] Gen. XIII, 7-13.

[6] Gen. XXIII, 1-20.

[7] Josh. XXIV, 32.

80. (c) By the Mosaic law the right of private dominion over things, whether movable or immovable, was confirmed; for not only stealing is prohibited, but also coveting the goods of another: "You shall not steal... You shall not covet your neighbor's house; nor shall you desire his wife, not his servant, not his maidservant, not his ox, not his ass, nor anything that is his."[1] - In order to render the possession of fields firmer, it is strictly forbidden that the boundaries by which they are circumscribed be transferred.[2] - Indeed, so that they might remain in the same family, they were not sold in perpetuity, but could be redeemed; and, when the year of the great jubilee recurred, even fields not redeemed returned to the former possessor.[3]

[1] Exod. XX, 17; cf. Deut. V, 21.

[2] Deut. XIX, 14.

[3] Levit. XXV, 23-28. - Yet the learned observe that a little before the exile, and afterward, this law of the jubilee was not always observed, and that certain Jews became richer by buying or invading the fields of others.

81. (B) Under the evangelical law. (a) Christ by no means condemned the right of private dominion which then flourished, but promoted the good use of riches: He called the poor in

spirit blessed;[4] to those who wished to be perfect He gave the counsel of selling all things and giving the price to the poor;[5] He commanded all to bestow alms upon the needy.[6]

[4] Matt. V, 3.

[5] Matt. XIX, 21; Luke XII, 33.

[6] Matt. XXV, 41-43.

(b) Relying on the evangelical counsels, the Christians of Jerusalem instituted a certain community of goods: "For neither was there anyone needy among them; for as many as were possessors of fields or houses, selling them, brought the prices of those things which they sold, and laid them before the feet of the apostles; and distribution was made to each one according as anyone had need."[7] From this certain persons inferred that the Apostles were supporters of communism; but from the context it is manifest that they did not deny the right of private dominion, but rather affirmed it; for St. Peter thus addresses Ananias, who had defrauded concerning the price of the field:[8] "Did it not remain to you while remaining, and when sold was it not in your power?" These words clearly show that Christians sold their goods freely and from charity, and that even after the goods had been sold they could have retained them for themselves. Moreover this community lasted only a few years, and provision was made otherwise for the necessities of the poor, especially through collections.

[7] Acts IV, 34-35.

[8] Acts V, 4.

Therefore Scripture teaches two things: (a) that the right of property is legitimate; (b) nevertheless that certain burdens are incumbent upon the rich, especially almsgiving.[1]

[1] St. Paul sets forth the manner of acting with the rich thus (I Tim. VI, 17-19): "Charge the rich of this world not to be high-minded, nor to trust in the uncertainty of riches, but in the living God, who gives us abundantly to enjoy; to do good, to become rich in good works, to give easily, to communicate, to lay up for themselves a good foundation for the future, that they may apprehend true life."

82. 2. The Church faithfully guarded the doctrine of Christ, and expressly defended it against heretics:

(A) By condemning the Apostolics (third century), who, as Augustine testifies,[2] "most arrogantly called themselves by this name because they did not receive into their communion those who used wives and possessed their own things... But these are heretics for this reason, because, separating themselves from the Church, they think that those who use these things have no hope."

[2] Book *On Heresies*, heresy 40.

(B) By teaching, with the Fathers, that riches are not evil, but were given unequally by God, so that to the richer there might be furnished the occasion of exercising kindness and charity, but to the poor the occasion of cultivating patience and acquiring merits.

83. Yet it must be admitted that certain Fathers of the fourth and fifth century, while speaking of the grave duty of helping the needy, and also of the avarice and hardness of heart of the rich, sometimes used a manner of speaking which, at first sight, seems to favor the community of goods. Thus they call those who do not clothe the naked, if they can do this, thieves; those who deny food to the hungry, guilty of injury;[3] that goods are common, since we are all

brothers in Christ;[4] they extol the community of goods such as flourished among the Christians of Jerusalem;[5] they teach that the rich, when they give alms, render a debt to the poor;[6] that the superfluous things of the rich are the necessary things of the poor;[7] that all riches descend from iniquity,[8] etc.

[3] St. Basil, Homily on that saying of Luke, "I will destroy..." n. 7, in Migne, *P. G.*, XXXI, col. 275-278.

[4] St. Gregory of Nyssa, *On Loving the Poor*, orat. 1, in Migne, *P. G.*, XLVI, col. 466; St. Chrysostom, on I Cor., homil. 10, c. 3, in Migne, *P. G.*, LXI, col. 86.

[5] St. Chrysostom, on Acts of the Apostles, homil. 7, c. 2-3, in Migne, *P. G.*, LX, 65-68.

[6] St. Ambrose, *De Nabuthe*, one book, cap. 12, n. 53, in Migne, *P. L.*, XIV, 747.

[7] St. Augustine, *Enarrationes in Ps.* 147, n. 12, in Migne, *P. L.*, XXXVII, col. 1922.

[8] St. Jerome, Ep. 120 to Hedibia, c. 1, in Migne, XXII, col. 984-985.

84. To solve this difficulty, we note:

(a) That the same Fathers, when occasion is given, expressly assert the right of private dominion. Thus St. Basil:[1] "Is God unjust, who distributed to us the necessities of life unequally? Why are you rich, and he poor? Is it not indeed so that you may receive the reward of kindness and faithful stewardship, and he may be endowed with the great rewards of patience?" More explicitly St. Chrysostom: "Moreover he (St. Paul) knew that riches are not prohibited, if someone uses them as he ought. For as I have said: wine is not an evil thing, but drunkenness is evil; so riches are not an evil thing, but avarice is evil, cupidity is evil."[2] And afterward he adds that to sell all things is a counsel, not a precept. - This is otherwise clear from their manner of acting toward the rich, whom they do not excommunicate, but urge to help the needy.

[1] On that saying of Luke, "I will destroy," n. 7, in Migne, *P. G.*, XXXI, col. 275.

[2] Homil. 2 to the people of Antioch, n. 5, in Migne, *P. G.*, XLIX, col. 40.

85. (b) That the sayings of the Fathers must be explained from the context and circumstances: for the most part they are taken from sermons, in which they speak in an oratorical manner; furthermore they said these things either on the occasion of a great calamity, while many poor persons were living in necessity, or by addressing rich persons who showed no charity toward the poor.

86. (c) Thus in a broad sense the rich are called thieves and guilty of injury, who permit goods to be corrupted which they are bound to bestow upon the needy, inasmuch as they are stewards of the goods which the Creator has bestowed upon them. - Goods are called common, because they were created by God and handed over to men for relieving the necessities of the human race, so that in a case of extreme necessity they truly become common. - Therefore it is not strange that the customs of the first Christians are praised, because they left their goods to the Apostles to be distributed to the brethren: for this, although it is not commanded, must be placed among the evangelical counsels. - The rich, by bestowing alms, render a debt of charity to the poor, because God wills superfluous things to be given at least in part to the poor: in this sense the superfluous things of the rich are the necessary things of the poor; for God commands the rich to relieve the necessities of the poor from their superfluous goods. -

Finally, riches flow from iniquity, inasmuch as, according to many Fathers, the division of goods, and therefore the origin of riches, took its beginning only from original sin and the corruption of morals which followed from it: for in the state of innocence all things could have remained common.

87. (C) Whenever heretical sects, such as the Waldenses, attacked the right of property, the Church defended it more explicitly.[3] Hence, when the errors of communism and socialism were raging everywhere, Pius IX and Leo XIII expressly set forth and vindicated Catholic doctrine.[1]

[3] Thus Innocent III declared against the Waldenses that the rich, possessing their own things and giving alms, could be saved (Denzinger, n. 373).

[1] Pius IX, Encyclical *Qui pluribus*, Nov. 9, 1856; *Quanta cura*, Dec. 8, 1864; Leo XIII, Encyclical *Rerum Novarum*.

88. 3. The second part of the thesis: the right of dominion flows from natural right. It is certain. That form of dominion flows from natural right which is demanded, on the one hand, by the nature of man and his private good, and, on the other, by the common good, or the end of society. But, given the present condition of human nature, the form of private, exclusive, and permanent dominion is morally necessary both for the private good of man and for the common good of society.

89. 1. For the private good of man, inasmuch as he can be regarded as an individual and as the head of a family.[2]

[2] Leo XIII explains this argument splendidly in the cited Encyclical.

(A) Inasmuch as he is an individual, man, since he is a rational, provident, and progressive being, has the right of possessing as his own not only those things which are actually consumed, but also movable or immovable goods which are necessary for providing for future necessities. For upon him there is incumbent the right and duty of protecting his own life not only in the present, but also in the future, insofar as this can be done. - But he cannot securely provide for future necessities unless he has the right of possessing in a stable manner at least certain goods as his own, from which he can sustain life in time of sickness, or old age, or want and poverty; for man can and ought to foresee that he will not always be fit to acquire for himself food or clothing and other things of this kind; and therefore, if he is wise, he ought to provide for future necessities, not only physical, but also intellectual and moral. This indeed cannot be done better than by acquiring for himself and permanently preserving not only fruits and other kinds of foods, which are easily corrupted, but also fruitful lands, or things estimable by price, from which by his own or another's labor he can obtain all things necessary for himself.

90. (B) Inasmuch as he is the father of a family, man, who by natural instinct and divine ordination has procreated children for the conservation of the species, is bound by natural right to provide not only for himself, but also for his wife and children. But he cannot furnish this prudently and safely unless he has the right of acquiring for himself and transmitting to his own goods, whether movable or immovable, especially fruitful possessions, from which he can sustain his family in time of poverty, or of broken strength, or even after death. Therefore.[1]

[1] This is confirmed by the natural instinct innate in all, by force of which they wish to make useful external things their own: even infants vindicate certain things for themselves as their own, e.g., little gifts; adults likewise wish to have as their own, insofar as can be done, not only the fruit of their labor, but also the instruments which they use for laboring, the house which they inhabit, and other things of this kind. This innate propensity indeed, as universal and consonant with reason, must be said to arise from nature itself.

91. Most socialists indeed concede this rather freely; but they contend that better provision would be made for the necessities of individuals and of the family if the dominion of all things which serve production were placed in the hands of the State itself. To refute this, we observe the following. (a) The State is later than individuals and families both logically and chronologically, since it is nothing else than an aggregation of individuals and families;[2] and therefore the right of possessing belongs primarily to individual men and families, and only secondarily to the State. Now when private citizens, whether by their own industry or that of their ancestors, have legitimately acquired goods so that they may provide for themselves and their own, they cannot be despoiled of these goods unwillingly,[3] unless the common good requires this and equitable compensation is given; for the State was instituted not for destroying, but rather for protecting, the rights of citizens. Moreover we shall soon show that this spoliation is by no means required for the common good. Therefore the invasion of private rights which the collectivists propose would be unjust.

[2] "For man is older than the republic; wherefore he ought by nature to have had his own right to protect life and body before any State had come together." (Encyclical *Rerum Novarum*.)

[3] Leo XIII declares this thus (cited Encyclical): "Therefore if, by sparing expenses, he himself (the worker) has saved anything, and has placed the fruit of his thrift, so that its custody may be safer, in land, assuredly land of this kind is nothing else than wages themselves clothed in another appearance; and therefore the field thus purchased by the worker will be as much in his power as the wages acquired by labor... Therefore in that the Socialists strive to transfer the goods of private persons to the common, they make the condition of all wage-earners worse, since, the liberty of investing wages having been taken away, by that very fact they despoil them of the hope and faculty of increasing the family estate and of acquiring advantages for themselves."

92. (b) Moreover, public authority is constituted not so that it may provide for the necessities of individual citizens, but only for the common good; nor so that it may restrict without necessity the free activity of private persons, but rather foster and protect it. But if, under the pretext of providing for all the necessities of private persons, the State makes all productive goods (all capital, as they say) its own, by that very fact it limits the activity of individuals, by furnishing that which individuals can do by their own powers; and the tyranny of the State is greatly to be feared, since it alone possesses productive things, and citizens depend entirely upon it with regard to food, clothing, and other things necessary for life. Hence it has rightly been said that private dominion is the best bulwark of individual liberty;[1] and experience shows that those citizens enjoy greater liberty and activity who depend less upon the State, and trust more in their own powers.[2]

[1] This many socialists freely concede in Laveleye, op. cit., p. 537, although they deduce false consequences from it.

[2] H. de Tourville shows this, *Histoire de la formation particulariste,* Paris, F. Didot, 1905.

93. (c) Finally, as St. Thomas rightly observes,[3] private dominion is superior to public dominion for three reasons: "First indeed, because each one is more solicitous to procure something

which belongs to himself alone than that which is common to all or to many: because each one, fleeing labor, leaves to another what pertains to the common, as happens in a multitude of servants.[4] - In another way, because human affairs are handled more orderly if the proper care of procuring some thing lies upon individuals. But there would be confusion if each one indifferently were to procure anything whatever.[1] - Third, because through this the state of men is preserved more peaceful, while each one is content with his own thing. Hence we see that among those who possess something commonly and undividedly, quarrels arise more frequently." This indeed will be more clear from the following argument. - Therefore, if the good of the individual is considered, there is already required a private and exclusive right of possessing things as one's own.

[3] *Sum. Theol.*, 2. 2., q. 66, a. 2.

[4] Socialists cannot deny a fact of this kind, but they say that altruism, by which we pursue the good of others more than our own, will soon succeed the egoism which prevails in the present order of things. - But it is so natural to man, as he now exists among us, to love himself and his own more than others, that a universal change in this matter cannot be hoped for. In fact collectivists who become richer generally at least retain for themselves and their own the goods acquired, and do not divide them among proletarians, so that these rightly complain about that manner of acting; indeed workers themselves, who cultivate a garden by their own labor, by no means share with other workers the fruits growing there.

[1] Thus, for example, if all lands remained common, since not all are equally fertile, contentions would often arise concerning the possession of the fields which are more fruitful: if today such lawsuits arise among coheirs, how much more among strangers? - But if lands are distributed by public authority, will there not be place for respect of persons, and therefore for envy and quarrels?

94. 2. Private dominion contributes greatly to the good of society itself. For since the end of society is to promote the common good, with the rights of citizens preserved, that form of dominion must be said to be more consonant with natural right which more efficaciously fosters the abundant production of goods and an equitable distribution, and at the same time protects the legitimate liberty of citizens. But the matter stands thus when the right of private dominion is preserved; for (A) men, when they know that they are laboring to increase their own resources, and to transmit them to their children or to others dear to them, apply eagerness and far greater zeal: and this indeed greatly contributes to the abundance of fruits and to increasing the riches of the State; and in fact, under this form of private dominion, riches have grown to an immense degree and grow daily.[2] But on the other hand, when citizens expect no private profit to be retained for themselves and transmitted to posterity, most remain idle and sluggish, relying on the labors of others, and thus resources are gradually diminished and vanish. - This indeed is confirmed by experience: for in various regions, in France, Great Britain, America, Australia, Algeria, etc., villages and hamlets were established in which goods were common, under the leadership of Rob. Owen, Stephen Cabet, and other socialists or politicians; now nearly all those communities, although endowed with all necessary aids of life and with very ample economic apparatus, after some years vanished, dissolved by the laziness of many and by internal dissensions;[1] but if certain ones flourished longer, this must be attributed to the special industry of some leader, who was able to settle dissensions and restrain the natural carelessness of the associates.[2]

[2] With regard to the nations of Europe, see G. d'Avenel, *La Fortune privee a travers sept siecles*, Paris, 1895; E. Thery, *Histoire economique 1890-1900*, Paris, 1902; and with regard to the United States of America, C. D. Wright, *The Industrial Evolution of the United States*, New York, 1895.

[1] H. Spencer, *Principles of Sociology*, London and New York, 1897, t. III, ch. XXII, translated into French under the care of Cazelles and Gerschel: *Principes de Sociologie*; L. Reybaud, *Etudes sur les Reformateurs ou socialistes modernes*; Pierre Leroy-Beaulieu, *Les nouvelles societes anglo-saxonnes*, Paris, Colin, pp. 145, 152, 156 sq.

[2] W. H. Mallock shows this by various facts and reasons, *Social Equality*, London and New York, translated into French: *L'Egalite sociale*, under the care of F. R. Salmon, Paris, 1883.

95. (B) But we call an equitable distribution of goods that which is made according to each one's merit, or is proportioned to the social value of the work furnished, not that which is made equally to all without any respect to the value of the work furnished; for otherwise laziness, carelessness, and just complaints are fostered.[3]

[3] W. H. Mallock, op. cit., ch. VII.

(a) But, given the right of private dominion, generally speaking, each one receives goods according to the social value of the work furnished: capitalists indeed gain more, because they contribute more to the production of things, namely the very means by which riches are multiplied, and also the intellectual labor altogether necessary for increasing things,[4] and moreover they take upon themselves the risk of fortune, often very great; but workers receive less, because they contribute less, nor are they exposed to the danger of losing goods already acquired. Yet, from what commonly happens, they receive a price of labor proportioned to its social value, which, as common prosperity increases, grows daily; and since, moreover, many things become cheaper in price on account of their abundance, although others are dearer, they can today acquire for themselves many more things than in past centuries.[5]

[4] W. H. Mallock likewise demonstrates this, *Property and Progress*, London and New York, 1884.

[5] Cf. Paul Leroy-Beaulieu, *De la Repartition des richesses*, 6th ed., ch. 16, p. 450-451; A. De Foville, *La France economique*, Paris, 1887, p. 171-878. To the point, P. Leroy-Beaulieu, l.c.: "For 40 or 50 years, the expenses of the life of a household of workers may have increased by 20 to 25 percent, about a quarter. Now, since for 40 or 50 years the generality of wages in France has risen by at least 80 to 100 percent, one sees that real progress, taking account of the variations of prices, still remains from 50 to 75 percent."

Moreover, if they live frugally, they can often set something aside, and gradually render their condition better; indeed not a few are placed over the administration of industrial affairs and soon are numbered among the capitalists themselves.

96. (b) On the other hand, while collectivism flourishes, the distribution of goods cannot be done equitably: for if it is done according to each one's merits, as pleases some, then inequality, which socialists wish to take away, will soon return under another form, since the merits of various workers are wholly unequal; moreover who will bear an equitable judgment concerning the merits of others, especially in a society in which administrators are elected by votes? - If goods are distributed according to each one's necessities and demands, who again will judge equitably concerning these? Will not those who labor more and receive less complain justly? - But if they are dispensed equally to all and each, then the stimulus to labor will be lacking, many will indulge in laziness; "the incentives of individual talent and diligence having been

taken away, the very fountains of riches will necessarily dry up; and that equality which they imagine in thought would in reality be nothing other than the equally miserable and ignoble condition of all men, without distinction."[1]

[1] Encyclical *Rerum Novarum*.

97. (C) Certainly no form of dominion can be admitted which would remove from the midst the legitimate liberty of citizens, or would diminish it beyond what is equitable; for true liberty is necessary at once for the dignity and the happiness of man. But as long as the right of private dominion remains, a certain liberty flourishes in the choice of state of life, home, education of children, religious worship, etc. But when collectivism reigns, the liberty of individuals will be diminished and often trampled upon. (a) With regard to the choice of mechanical or liberal art, each one will depend entirely upon the State, since it is the universal distributor of offices and duties; an inquiry into the aptitudes and merits of individuals will be necessary, so that each one, according to the demands of society, may be applied to fitting labor; and often citizens will be compelled to perform a kind of labor wholly repugnant to them, all the more because the judges will be political men, who will strive to please electors rather than follow the laws of equity; and since, moreover, burdensome and lowest offices far exceed in number those which are pleasing and honorable, and men are accustomed to think more highly of their own talents than is fitting, the division of labor made by social power will displease very many, and will excite complaints and envies, not without great detriment to society. Furthermore, since the State alone is the owner and administrator of all things, nothing will remain for those who will not be content with their lot except to flee into exile, or to depart from this world.

98. (b) With regard to many other things liberty will likewise be constrained. For since the State, according to the theories of the Collectivists, ought to provide for the education of all children, now the father of a family will lose his rights over his own children,[1] and will lack the very great consolation which is found in domestic life. - Furthermore, since all presses, buildings, and other things of this kind are possessed by the Government, what will become of the liberty of publishing one's own thoughts, whether by books or sermons? No book will be able to be committed to type, no meeting to be held, unless the permission of the State has been added; and this very probably will be denied, if the ideas to be expressed by the writer or speaker differ from those which please the civil authority. - We say nothing of religious liberty: for there will be one religion, namely the religion of the State, one worship, namely the cult of humanity. - In one word, since the State alone is owner and master of all, and possesses all things which serve production, the omnipotence of the State must be acknowledged, and all private liberty perishes. - Therefore collectivism must be rejected.

[1] Leo XIII excellently declares that these rights flow from nature (Encyclical *Rerum Novarum*): "Paternal power is of such a kind that it cannot be extinguished or absorbed by the republic, because it has the same and common principle with human life itself. Children are something of the father, and, as it were, a certain amplification of the paternal person: and if we wish to speak properly, they enter and participate in civil society not by themselves per se, but through the domestic community in which they were begotten. And for this very reason, because children are naturally something of the father... before they have the use of free will, they are contained under the care of parents. Therefore what the Socialists introduce, having set aside the providence of parents, namely the providence of the Republic, they do against natural justice, and dissolve the framework of homes." Cf. St. Thomas, 2. 2., q. 10, a. 12. - How collectivism destroys

domestic life Richter pleasantly described, *Ou mene le Socialisme?* Paris, 1893, pp. 17, 24, 38, 61. - How much socialism harms liberty Huxley excellently declares, *Man versus State*, translated into French under the care of Gerschel: *L'Individu contre l'Etat*, 5th ed., Paris, 1901.

Therefore for the social good and the private good together there is altogether required a private right of dominion; therefore that right is altogether consonant with reason, and flows from nature itself.

III. The Arguments of the Collectivists Are Set Forth and Solved.

Socialists propose arguments of a threefold kind: historical, moral, and economic.

99. 1. Historically they contend, with E. de Laveleye,[1] that everywhere and among all Nations the original possession of estates and fields was collective; that it became individual late and gradually, when, because of the multitude of men, the cultivation of fields had to be more intensive; and that private dominion was introduced only by Roman law, and prevailed among the Nations of Europe. - From this they infer that private property in fields, introduced not by natural instinct and ordering, but by positive law, can be abrogated by the free decision of men.[2]

[1] E. de Laveleye, *De la Propriete et de ses formes primitives*, 5th ed., Paris, 1901; cf. P. Lafargue, *La Propriete, origine et evolution*; - Refutation by Yves Guyot, Paris, 1895.

[2] Yet de Laveleye himself does not advocate collectivism, but rather a certain State socialism, op. cit., ch. 36, p. 542-560.

To solve this difficulty, we observe two things:

100. (A) Laveleye by no means proves the historical fact which he asserts. He indeed alleges facts from which it is clear that among the Ruthenians, Germans, Javanese, Swiss, and certain other peoples certain goods were possessed collectively by a tribe or municipality; and from this he infers that these are traces of collectivism which always and everywhere flourished. Now there is no one who does not see that the conclusion extends more widely than the premises.

101. In fact, if the historical facts which have recently been investigated are attended to,[3] three stages, as it were, can be distinguished in the mode of possessing fields: (a) as long as men lead a pastoral life, pastures are possessed collectively by the tribe itself, so that invasions of neighboring tribes may be repelled better and more efficaciously; for since pastures are not cultivated, individuals care little about the exclusive possession of this or that estate, provided the grass growing spontaneously in the pastures suffices to nourish their flocks. But cattle, tents, and other movable things are possessed exclusively. (b) Once men and flocks have multiplied, it now becomes necessary to cultivate the earth for a while, so that it may produce more abundant fruits; but as long as this cultivation is not very intensive, men indeed possess the fields cultivated by themselves exclusively, but not permanently, but only during the time which passes between sowing and harvesting; for then it is expedient to cultivate new fields every year; hence among certain tribes or Nations fields are divided yearly among the inhabitants of a place. (c) But soon the time comes when, men having multiplied, more intensive cultivation of fields is now necessary for feeding the citizens; then a more permanent, and soon perpetual, possession of estates begins. For since strenuous labors are required for this cultivation, and by these assiduous labors fields are rendered much more fruitful, those

who have sweated in this work do not wish to be expelled from the fields cultivated by themselves, and public authority itself understands that no one can be compelled to leave the fields which he has cultivated with so much labor without just compensation; and thus exclusive and permanent possession of fields becomes necessary among cultivated Nations. - This indeed is confirmed by history; for among the Egyptians, Assyrians, Chaldeans, Chinese, and other most ancient peoples, it is certainly proved by the most ancient documents that private possession of fields was protected by laws.[1]

[3] Cf. P. Bureau, *La Propriete Fonciere*, in the periodical *La Science Sociale*, XXIV, Oct. 1902, p. 335-353; P. Lacombe, *L'appropriation du sol*, in the periodical *Revue de synthese historique*, Paris, 1903, t. VII, p. 29-39 and 291-301; S. T. Lapsey, *The origin of property in land*, in *American historical Review*, New York, 1903, t. VIII, p. 426-448.

[1] With regard to the Egyptians, cf. Lenormant, *Hist. anc. de l'Orient*, continued by E. Babelon, 9th ed., t. 3, Paris, 1883, pp. 16-18; Maspero, *Histoire anc. des peuples de l'Orient*, t. 1, Paris, 1895, p. 76-78. From the documents published there it is clear that among the Egyptians the right of private dominion flourished in nearly the same manner as in Europe during the Middle Age: namely, Pharaoh was considered to possess all the earth, but he divided it among priests and soldiers, who handed it over to farmers to be cultivated; but estates were so proper to their owners that they were transmitted to others by inheritance or purchase. Cf. Birch, *Ancient History from the Monuments*, London, pp. 31, 45, and elsewhere throughout.

With regard to the Assyrians, many contracts of purchase-sale have been found and published, and indeed most ancient ones, from which it is clear that fields, under certain civil and at the same time religious forms, were transmitted to other citizens; and that those who move the boundaries of estates are worthy of every execration. Cf. Sayce, *Records of the Past*, I, 139; VII, 111; Lenormant, op. cit., t. 5, p. 77-81; Maspero, op. cit., p. 760-764. - But especially let the Code of laws be read which Hammurabi promulgated, who was king of Babylonia 2000 years before Christ, in Scheil, O.P., *Textes Elamites-Semitiques*, Paris, 1902, where laws are handed down concerning the private dominions of houses and estates, p. 33-47.

Among the Chinese, already from ancient times there prevailed a system of dominion which can be equated with the feudal system. Cf. Eug. Simon, *La cite Chinoise*, Paris, 1884.

But the communities which flourish among the Ruthenians (*mir russe*), Javanese (*dessa javanaise*), ancient Germans (*marke germanique*), Swiss, and other peoples (*biens communaux*), exist together with the right of private dominion, and by no means exclude it; but they only show that a certain collective property can flourish in determined places and times, where cultivation is imperfect; or also, because of the kind of labor to be performed on estates (e.g., where canals of irrigation are desired), that it can sometimes be more useful than private property.[1]

[1] Concerning these communities see P. Leroy-Beaulieu, *Collectivisme*, l. I, ch. 6. - It must likewise be noted that, even among the Ruthenians, fields which formerly were divided every year among the inhabitants of the same village are now distributed only every third, or fifth, or even fifteenth year, because it is rightly understood that, for intensive cultivation, a longer possession of the same estate is required: for who would make great expenses to render a field more fertile, which would soon pass to strangers?

102. (B) But from this it is by no means clear in a general way that collective dominion is useful or necessary; for since history shows that such a system gradually decreases and gives way to private dominion as the number of men increases and as the necessity of cultivating fields in a more perfect manner increases, it is rightly inferred that this evolution is consonant with reason, indeed necessary for cultivated Nations, so that to return to collectivism would truly be regression and not progress. To illustrate the matter by an example, at the time when a certain

community of fields flourished among the Germans, the land could not nourish a twentieth part of the inhabitants dwelling there today; and so with the other regions.

103. 2. The arguments drawn from the ethical order are these: (A) According to Karl Marx (above, n. 62), the profit of capitalists arises from theft, inasmuch as they retain for themselves part of the wages owed to workers.

Resp. He indeed asserts this gratuitously, but by no means proves it; indeed the contrary is gathered from the facts.[2] - If the matter stood thus, all honest and capable capitalists would have prosperous affairs; but experience shows that from ten capitalists scarcely three or four make enormous profits, while the others gain little or nothing. - But the reason why some greatly increase their resources can be assigned as threefold: (a) very great expenses were made to build the workshop and furnish it with machines; hence capitalists ought to receive some increase from the money expended in all these things; (b) the risk of fortune is great, and under this title there is a right to proportionate profit; (c) intellectual labor, very arduous, is required in the ordering and direction of workshops, and also in fruitfully selling the fruits of production; and this is the principal reason why, among capitalists, only a few greatly increase their resources, namely because few apply themselves to this arduous and diligent labor. Thus it is explained how, without theft, capitalists gain much more than workers. And indeed the hope of profit is not only useful, but necessary, in order to impel the rich to devote themselves to industrial matters: if this is removed, most would quietly enjoy their goods, and would not think of constructing workshops, and thus many workers would be able neither to labor nor to make gain.

[2] Leroy-Beaulieu demonstrates this by many arguments, *Collectivisme*, p. 242-250.

104. (B) According to the same man, it is historically clear that the riches which capitalists possess were acquired in an unjust manner, namely by invading fields already cultivated by other Nations, ecclesiastical goods, etc.

Resp. - (a) We do not deny that certain goods were acquired unjustly; and if today there are any owners who by force or fraud invaded the resources of others, they are rightly to be compelled to restitution. But certainly there are many present-day capitalists who, by their own labor or that of their parents, have justly acquired riches; and these cannot be despoiled of their goods without injustice.

(b) Even when from the beginning the invasion of estates was unjust, after a long time it can become legitimate by prescription: not indeed in the sense that an unjust acquisition becomes just by the mere lapse of time; but because the social good demands that those who for a very long time have possessed estates and cultivated them cannot be disturbed in their possession; all the more because often the value of an estate has been increased a hundredfold by cultivation. Concerning this more fully where we speak of prescription.

105. (C) According to H. George, we can possess only those things which we acquire by labor: for by exercising our own faculties, we produce something which is truly ours; therefore fields cannot legitimately be possessed, because they are not the fruits of labor.

Resp. We indeed admit that labor is one of the legitimate modes of acquiring things as one's own, but we deny that it is the only legitimate mode. H. George indeed admits that a fisherman and hunter legitimately acquire the fish and animals which they occupy, when these belong to no one; nevertheless these are not the fruits of labor, but goods given indiscriminately to all, which legitimately become the property of the first occupant. Why can the same not be said of fields? "For a field," says Leo XIII,[1] "subdued by the hand and skill of the cultivator changes its condition greatly: from wild it becomes fruitful, from barren fertile. But those things by which it has been made better so inhere in the soil and are thoroughly mingled with it that for the greater part they are separable from the soil by no compact. But whether justice would allow anyone to seize and enjoy that in which another has sweated?" Since, therefore, the principal value of fields depends upon labor, it is equitable that they remain in the hands of those who have sweated in cultivating them.[2] The common good also demands this: for who would cultivate fields by strenuous labor which he foresaw would soon be occupied by strangers?

[1] Encyclical *Rerum Novarum*.

[2] H. Spencer felt the force of this argument; for at first he judged that owners of fields, after equitable compensation had been paid for their expenses, were to be expropriated; but, after the matter had been weighed more maturely, he understood that the expenses made by owners or their predecessors greatly surpass the sale value of the fields, so that it is by no means expedient that owners be expropriated.

106. (D) The same George proceeds: There inheres in all an equal right of living; but such a right is vain unless the goods which nature brings forth for all are common, especially estates; just as air and sea ought to remain common, so likewise fields.

Resp. - We indeed concede that the right of living inheres in all, and therefore that in a case of extreme necessity those goods can be occupied which are necessary for sustaining life. But from this it by no means follows that fields must be possessed collectively; for those who do not have estates labor on the estates of others, or exercise gainful arts, whence they acquire food and clothing for themselves. - Nor should it be said that workers are thus partly deprived of the fruit of their labor, since another part is retained by the owner of the field; for this is equitable, since both the labor of the worker and the natural powers legitimately acquired by the owner concur in the production of fruits. Moreover the possessors of fields, by paying taxes from which workers are immune, often render to society more than the primitive value of the soil occupied. - But the comparison brought forward has no force; air and sea are of inexhaustible use, nor can they be efficaciously occupied by private persons; while estates are easily exhausted, and do not bring forth fruits unless they are cultivated; moreover they are capable of occupation. Hence the public good requires that air and sea remain common, and that estates be occupied privately, so that they may be cultivated better.

107. H. George insists: the value of estates grows daily not so much from the industry of man as from the progress itself of society; namely, in cities, or in their vicinity, or near railways, the price of some property is increased tenfold or twentyfold in a few years, because a greater number of citizens is gathered there. Now such an increase (which in English he calls *unearned increment*) is by no means owed to the private owner of this property, but to citizens collectively taken, or to the State.

Resp. - A fact of this kind is not always, nor everywhere, verified, but only in certain places, in which many inhabitants are gathered together; but in other places the value of properties either remains the same, or sometimes decreases. Therefore it is not a universal fact, from which one ought to conclude that the mode of possessing fields must be changed universally, which moreover is very useful, indeed necessary, from the things said above. - Besides, there is question here of a matter of chance, which before every event can benefit or harm certain private persons, since no one knows with certainty whether the value of this or that property will be greater or less; nor is it unjust that those who probably foresaw such an increase enjoy it. - For the rest, nothing prevents the State in this case from imposing greater taxes on owners, by which at least a part of this increase will profit all. But from this it by no means follows that the right of private persons in properties must be removed from the midst.[1]

[1] For a fuller refutation of H. George, consult Rae, op. cit., p. 440-500; Mallock, *Property and Progress*; Hollaind, *Le socialisme americain*, translated from English into French, under the care of Buton, Brussels, 1900.

108. 3. Arguments from the economic order we have already anticipated above (n. 94-96). Socialists indeed wonderfully describe and extol the advantages which they expect will come from collectivism; but thus far all experiments attempted in various places have turned out empty.

(A) Yet they argue from those anonymous companies and monopolies (*trusts*) which today succeed prosperously, and from this infer that greater utility is to be hoped for from a universal monopoly to be established under the authority of the State.

Resp. That comparison limps altogether; for societies of this kind prosperously succeed because their administrators expect greater profit for themselves from the greater production of goods which arises from it; indeed they establish monopolies only to increase their own resources more efficaciously; and they constitute them according to the method of capitalists, not that of collectivists. Now if the State makes all profits its own, and divides them equally, then the efficacious stimulus to arduous labor ceases.[2] - Moreover experience already shows that certain ones of these monopolies, precisely because they were too universal, underwent an unhappy outcome.

[2] P. Leroy-Beaulieu shows this lucidly, *Collectivisme*, p. 344-358; *Repartition des Richesses*, p. 315-349; and Schaeffle, otherwise favoring socialism, admits it, op. cit., p. 64: "It is not yet enough, in a community of production composed of millions of men, that producer A know to say to himself: my income from social labor depends on my other 999,999 co-operators being as diligent as I. This does not yet awaken the necessary control, does not stifle the inclination to laziness and dishonesty, does not prevent the diversion of labor to the prejudice of the community, does not destroy egoism and cunning which manifest themselves through the exaggerated and unjust taxation of isolated works."

109. (b) Some draw an argument from the community of goods which flourishes in religious orders. - We indeed admit that this community is greatly useful in small groups of men who strive for perfection, and, on account of the love of God and of souls, deny their own will and their own advantages, so that they may more freely and efficaciously serve the utility of others; but perfection belongs to few, nor can collectivism be advocated unless men first learn to despise their own things, and to love brothers or fellow-citizens more than themselves. Now sad experience shows that charity, or altruism, as they say, thus far does not flourish among most men.

110. The third part of the thesis, namely that the right of private dominion is justly limited by the extreme necessity of the neighbor and by the demands of the common good.

1. It is certain that there inheres in the neighbor a strict right of limiting private dominion in a case of extreme necessity, as will be more opportunely declared below, n. 447. It is indeed controverted whether the rich man sins against justice who in this case neglects to succor someone in need, n. 452; but by justice he is bound at least not to impede the exercise of that right.

111. 2. It is likewise certain that there inheres in the prince the right of limiting private dominion on account of the common good.

For exterior things ought to yield to the common utility of all, and the right of possessing them ought to be determined so that it contributes to the justice, peace, and prosperity of citizens. But upon the prince there is incumbent the right and duty of promoting the common utility and providing for justice, peace, and prosperity. Therefore he can establish concerning exterior goods those things which are required for obtaining this end.

N.B. But limits which arise from charity alone render the use of dominion illicit indeed, but not invalid.

112. Corollary. The right of private dominion can be exercised only through the primordial fact of legitimate occupation. Thus commonly.

It is certain that some fact of appropriation is required so that private right of dominion can be exercised: for right is not exercised in the abstract, but in the concrete, and therefore through some particular fact by which things that belong to no one are appropriated. For there is not question here of the derivative modes by which goods already possessed by others are acquired, but of the original or primordial mode of acquiring dominion.

Now a fact of this kind, according to certain economists, is placed in labor or work expended upon the thing (n. 105). But undeservedly; for many things, e.g., natural fruits, are acquired without labor distinct from the occupation itself.

113. But it is commonly asserted that the primordial fact of appropriation is legitimate occupation, that is, occupation clothed with the due conditions (n. 211). For for legitimate dominion it is required and suffices that some thing be so connected with some person that it is called his own thing. But for this it is indeed required that it be occupied by some person to whose power it is subjected or whose utility it serves; but this also suffices. For by this occupation the thing, which previously was common to all, passes into the special utility of the occupying person, and is so connected with him that others can rightly be excluded from its possession. Therefore occupation is the primordial fact by which the right of dominion is acquired.

IV. Means for Preventing Socialism.

114. Since the causes leading to socialism are of many kinds, the remedies to be employed for preventing it likewise ought to be various; Leo XIII wisely proposes them in the Encyclical

often praised, and we shall briefly contract them, since they are declared more fully in other parts of Theology.

[1] Encyclical *Rerum Novarum*, second part; Encyclical *Graves de Communi re*; Godts, *Scopuli vitandi in pertractanda quaestione de condit. opificum*, Appendix I; A. Leroy-Beaulieu, *La Papaute, le Socialisme et la Democratie*, 4th ed., Paris, 1893, p. 92-276; Max Turmann, *Le Mouvement social Catholique*, Paris, 1901; L. Gregoire (Goyau), *Le Pape, les Catholiques et la Question sociale*, 3rd ed., Paris, 1899.

There are three remedies which must be furnished by the Church, the State, and Private persons, namely owners and workers.

1. First of all the intervention of the Church is required, since here there is question of a matter regarding morals. This indeed furnishes a divine remedy by doctrine, precepts, and social institutions.[2]

[2] This will be developed more fully in the Treatise on Contracts, n. 786-863, according to the principles of Leo XIII, whose Encyclical *Rerum Novarum* you will find at the end of the work.

115. 2. The intervention of the State is desired, by which a remedy may be furnished for the economic causes of socialism. This it can furnish:

(A) By fostering public prosperity, and by protecting the rights both of the rich and of proletarians, but especially of the latter, who, on account of want, can scarcely defend their own rights.

116. (B) More specifically: (a) by protecting the private possessions of owners; (b) by protecting the rights of workers, lest their labor exceed their strength; especially lest boys and women labor to their own harm.

117. 3. Owners themselves and workers can do much in this cause, namely by those institutes, associations, or societies, either mixed, in which owners and workers are gathered together at the same time, or also separate, in which workers or owners come together for protecting their own rights.[1]

[1] Concerning these associations, which are called patronages or professional guilds (*syndicats professionnels*), there is fuller treatment in the Treatise on Contracts, n. 833 sq.

Sect. II. - On the Various Kinds of Goods of Fortune and Semi-Full Dominion. — I. On the Various Kinds of Goods.

118. Now that the right of property has been placed in safety, a few things remain to be said concerning the various genera and species of goods, and also concerning the various modes by which semi-full dominion can be had in these goods. Now external goods are divided:

(A) Into corporeal and incorporeal goods: (a) the former are those which fall under the senses, such as a house, field, furniture; (b) the latter are said to be those which are not obvious to the senses, namely rights of fishing, hunting, receiving fruits, etc. This division is not opposed in its members, but only analogous, nor is it very useful except in the matter of prescription.

119. (B) Into movable or immovable: (a) the former are those which, without notable injury, are judged capable of being transferred from place to place physically, morally, or juridically, whether by their own force or by extrinsic force; (b) the latter are said to be those which cannot be transferred without detriment, such as a house, field, etc.

120. By French law, (a) immovable goods are such either 1) by their nature (*les terrains, les vegetaux adherents au sol, les edifices*); or 2) by destination ("accessories of an immovable to which they are attached"); or 3) by reason of the object to which they are referred (thus real rights of usufruct of immovable things, of servitude, use, habitation, and of most mortgages; thus also immovable credits, immovable actions);[2] or 4) by declaration (*les actions de la Banque de France, les rentes sur l'Etat peuvent ainsi devenir immobilieres*); or 5) by annexation (*dans un cas: la redevance en argent dont est grevee une mine en faveur du proprietaire du sol*).[1]

[2] Civil Code, art. 526; cf. art. 518-525; Planiol, I, n. 2232, 2233, 2648.

[1] Planiol, ibid., n. 2201-2237.

(b) But movable goods are such: 1) by nature (*meubles corporels*), 2) by anticipation (*moissons et recoltes qui font l'objet d'une saisie ou d'une vente*), 3) by determination of law[2] (*droits reels - propriete, usufruit, gage, privileges - portant sur une chose mobiliere; certains offices comme etudes de notaire, d'avoue...; creances de sommes exigibles, rentes, actions et interets dans les societes*).[3]

[2] Civil Code, art. 527.

[3] Planiol, ibid., n. 2237-2262.

But this distinction of immovable and movable goods is of the greatest moment for rightly understanding and executing many dispositions of civil law, with regard to testaments, donations, etc., etc.[4]

[4] Planiol, ibid., n. 2197.

121. (C) Into private or public. Private goods are either those of individuals, or of free groups (*richesses collectives privees*); but public goods belong to political groups, namely the State, provinces, municipalities (*domaines de l'Etat, des departements, des communes, - et aussi Etablissements publics*).[5]

[5] Cf. Planiol, I, n. 3005 sq.

122. (D) Into consumable or non-consumable. Consumable goods are those which are consumed by first use either physically, as food, or morally, as money; - non-consumable goods are those which even by prolonged use are by no means destroyed or changed, as houses, clothing.[6] The practical utility of this distinction appears in those things which regard usufruct and loan.

[6] Planiol, ibid., n. 2179.

(E) Into fungible or non-fungible. Two things are said to be fungible between themselves when one can take the place of the other in the payment of a debt: such are things which are commonly numbered, measured, or weighed, as money, oil, grain. Hence fungibility is a relation of equivalence between two things; if this is lacking, there is non-fungibility.[7]

[7] Ibid., n. 2181, 2182.

II. On Semi-Full Dominion Over External Goods.

Full dominion embraces the right of disposing, enjoying, and excluding others. Now it can be limited under this threefold respect, and, when it is thus limited, it is called restricted, or semi-full.

1. On Dominion in Which the Right of Disposing Is Restricted.

123. The right of freely disposing which belongs to perfect dominion is restricted in two ways:

(A) By the necessity of alienating, which the State can impose by force of eminent dominion: (a) on account of public utility:[1] for the particular good ought to yield to the public good; (b) on account of private utility,[2] which nevertheless redounds to the public good. In each case equitable compensation is owed, which generally is determined by the tribunals themselves.

[1] In France alienation of this kind, which is called expropriation for the cause of public utility, is established and defined by the law of May 3, 1841, in Riviere, *Lois usuelles*, p. 281-285.

[2] For France, cf. Civil Code, a. 682; Planiol, I, n. 1081-1087.

(B) By the prohibition of alienating, which can arise: (a) from a law prohibiting certain persons, e.g., minors, wives, interdicted persons, from alienating their goods; or prohibiting certain goods, e.g., a dowry estate, from being alienated; (b) from man, when the condition of not alienating is attached to some contract or testament.

2. On Semi-Full Dominion Which Consists in the Right of Enjoying.

Sometimes dominion is so divided that bare ownership belongs to one person, and the right of enjoying to another. But the right of enjoying, which can be granted both by law and by man, assumes a double form, namely usufruct, or use or habitation.

(A) On Usufruct.

124. Notion. When direct dominion of some thing remains in the possession of one person, while another can use and enjoy it, this latter has usufruct, which is defined: a real right of enjoying things of another, with their substance preserved.

It is called: (a) real, i.e., attached to the thing itself, so that it may be distinguished from the right of a lessee or tenant-farmer, which is personal, inasmuch as the lessor is personally bound toward the lessee; while in usufruct, the obligation is bound to the estate or thing itself; (b) of enjoying, i.e., not only of using the thing, but also of receiving its fruits, just as if the usufructuary were the owner; (c) with their substance preserved; for since the right of disposing remains in the possession of the owner, the usufructuary cannot alienate the thing, or consume it, or transform it into another form, even a better one, but must preserve it entire for the owner.

125. Usufruct arises either from law, which is diverse for diverse Nations,[1] or from man, whether by testament, or by an act between the living, or by prescription.[2] - It ceases by the death of the usufructuary, by the destruction of the thing subject to usufruct, or by the lapse of the appointed time.

[1] For France, cf. Civil Code, a. 384 and 754; Planiol, n. 1565-1589.

[2] Civil Code, a. 579; Planiol, n. 1574-1589.

126. Rights and duties of the usufructuary. (a) Rights: 1) He has the right of receiving all fruits: natural, which are produced without special industry; industrial, which are acquired especially by labor; civil, which are owed by force of a contract or of some obligation, as the price of leasing, rent, interest for loaned money, etc. Under the name of fruits do not come treasures found in an estate, nor mines which, at the time when the usufruct began, were not yet being worked; but only those things which grow and are received at certain times. - For the rest, let the civil laws be consulted.[3]

[3] Civil Code, a. 582-599; Planiol, n. 1614-1662; Supplement, p. 10*.

2. He can also lease or give his right to another: for he can enjoy either through himself or through another.

127. (b) Duties: He ought to enjoy as a good father of a family; 1) hence generally by civil law he is bound at the beginning to describe the goods whose usufruct he enjoys, with the owner present or at least summoned, so that he can render them such as they substantially were. Likewise he ought to be watchful lest the thing become worse.

2. He is bound to moderate repairs (*reparations d'entretien*), which are required so that the thing may be preserved entire; but not to greater repairs (*grosses reparations*), which, if they are made, must be paid by the owner himself.

3. He ought to pay annual burdens which are judged burdens of the fruits, such as taxes, real rent, expenses of a lawsuit in which there is question of usufruct.[4]

[4] For France, cf. Civil Code, a. 600-616; Planiol, n. 1663-1682.

128. Duties of the owner.[5] (a) He suffers the usufructuary to enjoy, i.e., he ought to do nothing by which the enjoyment of the usufructuary is diminished or extinguished. Upon him indeed lies the care of greater repairs, but he cannot be compelled to make them. He pays the expenses of a lawsuit when there is question of dominion over the thing.

[5] For France, cf. Planiol, n. 1683-1695.

(b) He does not furnish enjoyment, i.e., he is not personally obliged toward the usufructuary; he ought to hand over the thing in the state in which it is found, but he is not bound to render it better.

(B) On Use and Habitation.

129. Use is a real right of using a thing of another for personal advantage only, with the substance of the thing preserved. That use is called habitation when the thing of which there is question is a house.

Of itself, use does not imply the right of receiving fruits; but from the concession of law, the user can receive certain fruits for his own advantage, or for the utility of the family. But he cannot lease the

right to use nor grant it to another gratuitously. - Hence in practice the civil laws are to be consulted.[1]

[1] For France, Civil Code, a. 625-635; Planiol, n. 1741-1749; Supplement, p. 15*.

3. On Semi-Full Dominion in Which the Right of Excluding Is Restricted.

130. (A) Notion. (a) The right of excluding others, which belongs to full dominion, is restricted through real servitudes (*servitudes foncieres*), which are defined: burdens imposed on some thing for the advantage of a thing belonging to another owner.[2]

[2] Cf. Civil Code, a. 637-710; Planiol, n. 1750-1926; Supplement, p. 16*.

Hence servitude is real in two ways: because it falls upon an immovable thing, not upon a person; and it yields directly to the advantage of another thing, but indirectly to the utility of him who possesses this thing.

131. (b) Servitudes are divided: 1) by reason of origin, into natural servitudes, which are founded in the situation of places or in the mutual relations of estates; legal, which arise from law; and conventional, which are established from a pact.

2. By reason of mode, into continuous servitudes, which can endure without the intervention of man, as an aqueduct; and non-continuous, which demand the intervention of man, e.g., the right of passing through a field or drawing waters; - into apparent, which are manifested by some external signs, e.g., a door or window; and non-apparent, which reveal themselves by no exterior sign, such as the prohibition that a house or wall be raised higher.

132. (B) Principles concerning servitudes. (a) He who suffers the servitude, or the possessor of the servient estate, cannot do anything from which the right of another would be impeded, diminished, or taken away; he can free himself from the servitude by relinquishing the servient estate.

(b) He who enjoys the servitude, or the possessor of the dominant estate, can, even on the estate of another, do whatever is necessary for the use of his right; but he ought to abstain from that which would render the condition of the servient estate worse.

For the rest, see the jurists.

§ III. On the Dominion of Man Over the Services of Others, or On Servitude.

133. I. State of the question. That men can preside over other men is clear from the fact that some are superior to others, and also from the hierarchy which God willed to exist among men. It is likewise certain that no man has full dominion over other men, with the right of life and death; for this belongs to God alone, inasmuch as He is the supreme Lord of all things, as was shown above (n. 34). From this it follows that full dominion belongs to no man over the person itself or even over the internal faculties of other men: for each one has useful dominion not only over life and members, but also over the faculties, and can exercise them at will, provided he

does not usurp the rights of God or of citizens. - But the external exercise of liberty can be restricted, lest that exercise harm other citizens or the public good.

[1] St. Thomas, 2. 2., q. 57, a. 3 ad 2; a. 4 ad 2; De Lugo, disp. III, n. 19-63; disp. VI, n. 10-31; Lessius, l. II, cap. 4, n. 13-17; Carriere, n. 42-54; Meyer, II, n. 119-123; P. Allard, *Les Esclaves chretiens*, Paris, 1876; *Esclaves, Serfs et Mainmortables*, Paris, 1884.

134. But the question is whether dominion can be acquired over the works of others, or the fruit of labor. Now all concede that it is permitted to anyone to acquire a right over the works of others for a time, as will be said where we speak of the contract of labor. But the question is whether the same right can be acquired in perpetuity, or in other words, whether servitude is licit.

For servitude is perpetual service for perpetual food and clothing, or, more fully, that service by which, for the whole time of life, works are sold or leased, under the condition that the master furnish necessary food and clothing. - This is servitude theoretically and considered in itself; for historically many things were generally attached to servitude which are opposed to natural or divine right, namely the separation of little children from parents, of husbands from wives, the right over life or members, and other things of this kind.

135. II. Principle: Servitude considered in itself, when it is free from every abuse, is not intrinsically opposed to natural or divine right, but nevertheless is less consonant with human dignity and is liable to grave dangers.

1. The former is proved. (A) By reason. For servitude consists in this, that someone promises to furnish all his works to a master throughout his whole life; now if someone can, for wages received, oblige himself to serve for a year, why will he not be able to do this for a longer time, indeed for his whole life? For although he ought to retain the right over his internal faculties and their free exercise, nothing prevents him from renouncing the external liberty of disposing of his own labor and its fruits for a just wage, whether for a time or in perpetuity; for the right of disposing of one's own labor is not necessary to man, but only useful.

136. (B) Scripture did not condemn servitude as intrinsically illicit, but only restrained its abuses, and inculcated principles from which logically and gradually servitude had to be abolished.

(a) Moses did not prohibit servitude already existing,[1] but tempered it; for he forbids anyone to covet the male servant or maidservant of his neighbor;[2] he indeed permits them to take servants from strangers and foreigners;[3] but if one of the sons of Israel has been reduced to servitude, he will become free in the year of jubilee.[4]

[1] Gen., XVII, 23.

[2] Exod., XX, 17.

[3] Levit., XXV, 45-46.

[4] Levit., XXV, 54-55; cf. Exod., XXI, 2.

(b) Under the New Law, the Apostles command that servants be subject "in all fear to masters, not only to the good, but also to the harsh";[5] they counsel that servants be made free, if this can be done,

but otherwise that they patiently tolerate servitude;[6] they admonish masters to treat servants kindly,[7] and sometimes exhort, but do not command, that they free them.[8]

[5] I Pet., II, 18; cf. Coloss., III, 22; Ephes., VI, 5.

[6] I Cor., VII, 20-24.

[7] Ephes., VI, 9; Colos., IV, 1.

[8] On this matter let the whole Epistle to Philemon be read.

(c) Nevertheless they set forth principles from which the abrogation of servitude logically flows. For all are sons of God, brothers in Christ, members of one body whose head is Christ, so that before God there is now neither Gentile nor Jew, servant nor free;[9] for all have been redeemed from the servitude of sin by the merits of Christ.[1] Thus, as if from the root, whatever was inhuman in the manner of acting with servants was cut away, and at the same time the way was prepared for their full emancipation.[2]

[9] Galat., III, 26-28; Coloss., III, 11; I Cor., XII, 13.

[1] Rom. VI, 15-23.

[2] How the Church gradually took care that many servants be freed and extinguished servitude we briefly set forth in *De Vera Religione*, n. 157, and Wallon, *Histoire de l'Esclavage dans l'antiquite*, Paris, 1879; Allard, *Les Esclaves chretiens*, Paris, 1876, declare it fully. Leo XIII also sets this forth splendidly, Encyclical *In plurimis*, May 5, 1888.

138. The latter is proved, namely that servitude is less consonant with human dignity and is full of dangers.

(A) Less consonant with human dignity. For through Christ man has been freed from the servitude of sin, raised to the dignity and liberty of a son of God; and fraternal communion has been established among all men of all Nations; for all tend toward the same end through the same means: "All are members of the same body, and all sharers of the same divine table: to all the gifts of grace are open, and likewise to all the gifts of immortal life."[3] Now those who, for food and clothing alone, expend their whole activity throughout their whole life for the utility of another and at his nod fall into the danger of forgetting Christian dignity, and of putting on a base character and base sentiments which are unworthy of an adopted son of God, indeed of a man conscious of his own dignity.

[3] Leo XIII, cited Encyclical.

139. (B) Full of dangers; while servitude flourishes, masters easily become proud, cruel toward servants, idle, and given over to luxury: for they easily judge themselves by nature wholly superior to servants, and that these have no rights, so that it is permitted to use and abuse them. This is moreover confirmed by history: for although masters were not lacking who treated their servants kindly, for the most part servitude gave occasion to many abuses.[4]

[4] Allard, *Esclaves chretiens*, p. 148-184; *Esclaves, Serfs...*, p. 48-75.

140. III. On the titles by which servitude was customarily constituted. - Concerning voluntary handing over of oneself we have already spoken in the thesis itself. Other modes were:

1. Purchase and donation: when someone had been legitimately subjected to servitude, it was permitted to the master to sell or give his services (but not his person) to another. Yet this right was restricted in many ways, lest infants be separated from mothers, wives from husbands, or those worn out by old age handed over to harsh men. - Generally also theologians handed down that a father, oppressed by necessity, when he could be helped in no other way, could sell or pledge his son; yet that he was bound to redeem him as soon as his affairs turned out prosperously. - This is not licit in our days, since there are other means of relieving the necessities of parents.

2. The right of war; for since in antiquity it was judged permissible for the victor to kill the conquered, a fortiori it was thought equitable that an enemy whose life had been spared could be reduced to servitude. But today this is rightly judged to be opposed to the law of Nations.

141. 3. Birth from servants, by force of which those who were born from servants were regarded as servants. This indeed was judged legitimate at the time when servitude flourished as a permanent social institution; but in itself it was not consonant with equity. He who had been born from servants could indeed have been regarded for a time as a servant, by title of compensation for expenses made in his education, but not in perpetuity.

"And so to the Catholic Church... the expeller of servitude, and the effectress of true liberty, fraternity, and equality among men, there can never be enough praise or gratitude."[1]

[1] Leo XIII, cited Encyclical.

Art. II. On the Subject of Right.

Division. **General principle.**

Of children under paternal power.

Of wives.

Of clerics.

Of moral persons, or societies.

§ I. General Principle.

142. Thesis: Only an intellectual nature is capable of having dominion.

For he alone is capable of dominion who can morally dispose of some thing and suffer injustice: for this is clear from the very notion of right, which is a moral and inviolable power of having something, etc. But only an intellectual nature can morally dispose of some thing, since moral faculty necessarily supposes intellect and will; likewise only such a nature can suffer injustice: for no one suffers injury unless he is unwilling reasonably, and he cannot be unwilling who lacks will and reason. - Hence brute animals do not properly have rights, and without injury properly so called they can be harmed or killed; nevertheless man owes it to himself and to the natural order that he not injure or destroy animals without sufficient reason: he can indeed use them, but not abuse them.

143. Corollary. From this it is asked whether the insane and little children lacking the use of reason are capable of dominion.

If natural right alone is inspected, the matter is not without difficulty: for these, since they are radically endowed with reason, seem capable of dominion; but moreover it is not clearly conceived how especially he who never has had the use of reason, or will have it, can obtain true and proper dominion, since he can perform no moral act, not even the acceptance of goods.

But civil law, as it flourishes among most Nations, has composed the matter equitably, by establishing that there inheres in little children and the insane a right of dominion, but that the administration of the goods which they possess must be exercised by tutors or curators. And rightly indeed; for, on the one hand, these are subject to human necessities and are capable of a certain radical dominion; on the other hand, since they are incapable of administering their own goods, the administration of goods is to be committed to those who enjoy the use of reason. A law of this kind, as just and determinative of the right of property, obliges in conscience; and therefore those sin against justice who usurp the goods of the insane or of infants.

These things being posited, we shall treat of those whose dominion is restricted or subject to special difficulties.

§ II. On the Dominion of Children Under Paternal Power.

144. 1. Notion. Children under paternal power are called legitimate, or legitimated,[2] children who are still under paternal power, and who therefore are neither emancipated nor of age.

[1] Lessius, l.c., n. 7-12; Lugo, disp. V; St. Alphonsus, n. 488; Carriere, n. 226-245; Ball. P., n. 43-50; Marres, l. I, n. 28-39.

[2] Legitimate are those who have arisen from a marriage contracted according to the laws; legitimated are those who, although not born from a legitimate marriage, nevertheless afterward by the authority of the Prince acquired the rights of legitimate children.

Now they become of age at the age determined by law, i.e., in France when the twenty-first year has been completed. - But they are emancipated either explicitly, by a special juridical act, or implicitly, by contracting marriage.

145. 2. Principles. (A) The right of possessing, which naturally belongs to minors, is restricted by various limits according to various laws, especially with regard to the administration of goods; and rightly so: for although they are capable of dominion as soon as they have acquired the use of reason, they are judged not mature enough to administer their own affairs prudently;[1] moreover certain burdens are incumbent upon them in relation to parents, as is explained in the Treatise on the Various Obligations of States, n. 972-973.

[1] By Roman law, which the older authors follow, the goods of children were of a fourfold kind: military, which children acquired by reason or occasion of military service; quasi-military, acquired by reason of some public office; profectitious, acquired from the things of the father, or in view of the father; adventitious, which came from elsewhere. Cf. Ball. P., n. 44-45.

146. (B) By French law, (a) children, even minors, retain direct dominion over all goods legitimately coming to them; (b) but they do not have usufruct before the eighteenth year of age, or before they are emancipated; unless there is question of goods acquired by separate industry, - or

given under the express condition that neither father nor mother enjoy them, - or coming from a succession in which the parents have been declared unworthy. - Outside these cases, the usufruct yields to the father, or, when he is dead, to the mother if she has not entered a new marriage; this was established by way of compensation for the education of the children; (c) but the administration of goods is in the hands of the parents or tutor, until the children become of age or emancipated.[2]

[2] Civil Code, a. 371-396; a. 476-487; a. 730; Planiol, I, n. 2105-2238; Allegre, I, p. 256 sq.; Supplement for France, p. 21*-24*.

147. 3. Corollaries. (A) When there is question of the right which children have in small goods given by parents, attention must be paid to the intention of the parents, whether express or reasonably presumed: (a) if they have been given absolutely, the children have full dominion over them, and can enjoy them for every legitimate use; (b) if for a determined use, e.g., for acquiring books, or carrying out studies, those act unjustly who expend the money received on another use, say on immoderate recreations or pleasures; (c) if the express intention has not been given, it can be discerned from the circumstances, especially from the nature of the thing itself; e.g., if there is question of a thing consumable by first use, it is judged to have been given in an absolute manner; if of a non-consumable thing, e.g., books, clothing, it is judged to have been given for a determined use, and therefore it cannot be sold so that the money may be employed for another use. - When money is given not by parents, but by relatives or friends, it is judged to be given absolutely, unless the contrary is said.

148. (B) When children, laboring either within or outside the paternal house, make profits, these things seem to be established:

(a) If they labor outside the father's house, and acquire something by their own industry, they can retain the profit for themselves, because this is implicitly granted by the parents by the very fact that permission to work outside the paternal house was given to them. - Yet except if they receive food and clothing from the parents: for then, since the father is not bound to support a son having his own goods, expenses of this kind must be compensated; - or if the parents labor under need: for then children ought to relieve their necessities, as is explained in the Treatise on the Various Obligations of States, n. 972-973.

149. (b) If within the house and from the goods or industry of the father the children gain profit, more probably they have a right to a stipend proportioned to their labor, which they can retain, after expenses for food and other things of this kind have been deducted, and with the obligation remaining of helping needy parents. The reason is that whoever labors has a right to obtaining wages, after expenses made for his sake have been deducted; nor is there any reason why minors should be deprived of this right. - I said more probably, because some think that nothing is strictly owed to minor children who labor at home, since the father can use their labor for administering domestic affairs, by way of compensation for the education given to them.[1] - Yet according to all it is expedient that children be allowed to gain something for themselves, so that they may be incited more efficaciously to labor.

[1] Thus Laymann, l. III, tr. 4, c. 8, n. 11; Antoine, Part III, c. V, quest. 13; Billuart, diss. IV, a. 4. But most theologians, both older and recent, favor our opinion. Since by French civil law, also flourishing in certain other regions, the usufruct of a thing acquired by common industry with the father belongs to the father until the minor son has reached the eighteenth year, he cannot occupy profit of this kind without the explicit or tacit consent of the father.

(c) When among several children some labor at home, and others can labor outside the house and gain something for themselves, it is equitable that the former obtain some stipend, after expenses for food, clothing, etc., have been deducted. - This especially holds if the children are already of age.

150. (d) So that all difficulties may be more easily removed, it is altogether expedient that an agreement be made between father and son when this son begins to gain something either at home or elsewhere; and this agreement must be observed. - If no contract has intervened, in practice it can be discerned from the circumstances, the customs flourishing in the place, and the presumed intention of the parents what the rights of the children are. If some doubt remains, before the fact hidden compensation is by no means to be counseled, by which namely the son would take something secretly from the parents as a reward of labor; - for this is full of dangers, as will be said below; - after the fact, those are not to be compelled to restitution unless they have morally certainly violated the rights of the parents.

§ III. On the Dominion of Wives.

151. I. Preliminary remarks. Husband and wife, by contracting marriage, form a certain society, of which the husband is the head. By natural right the wife remains capable of full dominion, and could not only possess her own goods, but also administer them, yet with the duty of helping to bear the burdens of marriage. But since the husband is supposed to be more skilled in administering economic affairs, and generally is, it is fitting, even when natural right alone is inspected, that the wife effect nothing of any moment in managing goods without consulting her husband. - But in practice what the rights and duties of the wife are has been defined by civil law among the various Nations; perhaps in certain regions it has granted more than is equitable to the man, but in these last times the laws have been changed somewhat, and probably will also be changed, to this end, that the rights of the wife may become more secure.[2]

[1] Lugo, disp. XVI, n. 64-74; Lessius, l. II, c. 12, n. 82-89; St. Alphonsus, n. 489; Carriere, n. 246-282; Marres, l. I, n. 44-96; Ball. P., n. 51-52 and n. 322-327; Genicot, n. 473-474; Lehmkuhl, n. 892-897.

[2] Cf. A. Boistel, *Des limites a apporter aux pouvoirs du mari*, in *La Reforme Sociale*, Jan. 1902, p. 48-60; Turgeon, *Le Feminisme francais*, Paris, 1902, t. II, p. 125-172.

II. On Matrimonial Agreements According to the French Code.

152. 1. General prescriptions.[3] (A) Spouses can enter any agreement whatever, provided it is not opposed to good morals, to marital and paternal authority, or to civil law. If a special pact is lacking, the marriage is judged to have been entered under the regime of community.

[3] Civil Code, a. 1387-1398; Planiol, n. 762-845, Supplement, p. 24*.

(B) Agreements must be entered before the celebration of marriage, before a notary; once entered they can be changed in the same form before, but not after, the celebration of marriage.

(C) Under whatever regime, the wife depends upon the husband with regard to the alienation of immovable goods, and in order to appear in a civil trial; yet that dependence ceases when the matrimonial bond has been dissolved, - or through separation as to bed, according to the law of February 6, 1893.

153. 2. On the principal regimes under which marriage can be contracted. There are three: the regime of community; the regime excluding community; the dotal regime.

(A) The regime of community[1] can be twofold: community is legal or conventional.

[1] In France five marriages out of seven are contracted under the regime of legal community. In the year 1898, 287,179 marriages were celebrated, of which 204,833 were without a special pact, and therefore under the regime of legal community; 68,412 under some regime of community; 10,112 under the dotal regime. - Cf. *Bulletin de la Societe de legislation comparee*, 1900, p. 562. - Planiol discusses wisely the advantages and disadvantages of community, III, n. 907.

(a) Legal community is had whenever no special contract is entered, or the spouses declare that they wish to contract under the regime of community.

Now under this regime,[2] there remain proper to each spouse: 1) all immovable goods which were possessed before marriage, or afterward came to him or her from donation or succession, except those which are given under the explicit condition that they ought to be common; or were acquired by onerous title, from the price of a proper good sold; 2) movable goods given with the explicit condition that they be proper.

[2] Civil Code, a. 1401-1496; Planiol, III, n. 901-1425.

But the following become common: 1) all movable goods, both present and future, except those which are expressly given as proper; 2) the fruits of all immovable goods; 3) all immovable goods bought from common goods during the marriage.

154. These things being posited, while the community remains, the wife retains ownership, but not the administration of her goods, which passes to the husband; nor usufruct, which passes to the community, of which the husband is the head and administrator. And so she cannot alienate her own goods without the consent of the husband; likewise the husband cannot alienate the goods proper to the wife without her permission. - With regard to common goods, the wife enjoys neither administration nor fruition, but has a right to honorable support, according to her condition. But the husband, as administrator of all these and owner of one half part, has the right of selling, alienating, or burdening them with mortgages, without the consent of the wife, according to the limits fixed by law.

155. When the community has been dissolved (by death, divorce, separation of bodies or goods, or the very long absence of one spouse): 1) the wife recovers full dominion over all goods which are proper to her; 2) with regard to common goods, she can either vindicate for herself one half part, if she wishes to pay one half part of the debts; or repudiate this half, if she does not wish to be burdened by the common obligations: in which case she can demand nothing besides clothing. - When she vindicates the half for herself, she ought to take care that an inventory be

made, so that frauds may be removed more efficaciously, and that she not be burdened by common debts beyond the proportionate part of the profit which she receives from the common goods; this indeed she obtains, provided that this inventory has been made in good faith.

156. (b) Conventional community is had when the spouses by a special pact extend the legal community, e.g., by declaring that all movable and immovable goods, present and future, will be common; or restrict it, e.g., by establishing that only those goods are common which during marriage were acquired from the revenues of each (*communaute reduite aux acquets*),[1] or that common goods are to be divided not equally, but according to a given proportion.[2]

[1] Concerning this regime see Civil Code, a. 1498-1499, Supplement, p. 35*.

[2] Concerning these see Civil Code, a. 1497-1528; Planiol, III, n. 977-1014.

157. (B) The regime excluding community[3] can be had in two ways: (a) without community of goods; (b) with separation of goods.

[3] Civil Code, a. 1529-1539; Planiol, n. 1416-1462.

(a) Without community of goods: then the wife preserves direct dominion over her goods, or at least over their value; but the husband has the usufruct and administration of the same, excepting those which have been specially reserved to the wife, and with the burden of providing for the honorable support of the wife. - When the regime has been dissolved, the wife recovers full dominion over her goods, but cannot reclaim the fruits already received by the husband.

(b) With separation of goods: each spouse retains not only ownership, but also the usufruct and administration of his or her goods; nevertheless the wife cannot exercise the right of alienating immovable goods without the husband's consent. Each spouse ought to sustain the burdens of marriage according to a proportionate part; if a pact is lacking, the wife ought to hand over a third part of her revenues to the husband. If either falls into poverty, the other ought to bear the burdens of the domestic matter.

158. (C) The dotal regime is especially situated in this, that the dotal goods of the wife, at least immovable ones, cannot be alienated. This regime is not had unless the spouses expressly declare that they enter marriage under this regime. Then the goods of the wife are of a double kind: dotal, which by the nuptial pact are constituted as dowry (during marriage they can neither be constituted nor increased); and paraphernal, which are outside the dowry; for the general rule is that all goods are paraphernal which are not explicitly constituted as dotal in the nuptial pact itself.

(a) The wife retains direct dominion of the dowry, but its administration and usufruct are in the hands of the husband. - Immovable dotal goods can neither be alienated, nor obligated, nor prescribed, even if the wife consents, except in a few cases excepted by law. But movable dotal goods can more probably be alienated, yet with the burden of restoring their value when the marriage has been dissolved.

(b) With regard to paraphernal goods, the wife retains administration and usufruct, but without being able to alienate immovable goods without the consent of the husband.

The dotal regime or separation of goods protects the rights of the bride better, but imports a certain distrust toward the husband; moreover, in a case, money which is often required for commerce is borrowed with greater difficulty. Hence, in practice it is often expedient to embrace a mixed regime, especially that which is called *communaute reduite aux acquets*.

III. Moral Principles Concerning the Dominion of Wives.

159. Whatever the civil law may be, certain principles must be established, by which it can be discerned when spouses inflict injury on one another.

1. Generally the civil law determining the various rights and duties of spouses in this matter must be observed in conscience, because there is question of a law determinative of property, and also of a contract freely entered between the parties. - Nevertheless, since rights and obligations proceed with equal step, if one of the spouses does not fulfill his or her obligations, he or she cannot vindicate for himself or herself the rights corresponding to them. - Moreover if deceit and fraud intervened in the contract itself, the injured party is not morally bound to fulfill those obligations which were unjustly imposed upon him or her.

160. These things being posited, the wife (A) has a right to honorable support according to her condition, even if she has brought no goods, nor any pact was explicitly entered: for natural right demands this.

This honorable support embraces not only food and clothing, but also honorable recreations, according to her condition; and the faculty of bestowing moderate alms, since the wife remains bound by the law of charity.

161. (B) If the woman is bound to succor her own parents, or children received from a preceding marriage, she ought to furnish this from her own goods, if she has any; - but if these are lacking, she can relieve their grave necessity from common goods or from the goods of the husband; and indeed without the consent of the husband, if the donations can be regarded as alms; but if they are more ample, with the consent of the husband, since he is administrator of the common goods and owner of his own. - Certain persons probably say the same concerning brothers and sisters who are in grave necessity.

162. (C) Since the wife is not a servant, but an associate, she is not bound explicitly to ask from the husband those things which are necessary for her own support, but can vindicate them for herself, - indeed secretly subtract them, if the husband is irrationally unwilling.

Likewise, if the husband is prodigal, the wife can hide certain goods and preserve them for future necessities. - Likewise, if he culpably neglects to furnish necessities to a son studying or laboring outside the house, she can supply these from common goods or from goods proper to the husband. - Yet in these matters care must be taken that she not indulge too much either herself or her children, since not rarely wives are prone to extending their rights beyond what is equitable.

163. 2. When full separation of goods flourishes, each spouse sins against justice if, while the other is reasonably unwilling, he or she diverts part from the other's revenues. Yet a greater quantity is required for constituting grave sin for spouses than for strangers, because they are judged less unwilling.

164. 3. The husband sins against justice:

(A) By dissipating the goods proper to the wife: (a) either by alienating them against the wife's will or against civil laws; or by extorting the wife's consent by moral violence or fraud: for he is not the owner of these goods, but only the administrator; - (b) by managing them badly and negligently; for he ought to administer the wife's thing as a good father of a family; otherwise he inflicts harm, and as a damager is bound to restitution.

165. (B) By alienating common goods in a manner prohibited by civil law, e.g., by giving immovable goods, or by hiding a donation under the appearance of a sale; for one half part of these goods belongs to the wife, and the husband cannot dispose of this part except by concession of law; therefore he usurps the rights of the wife by alienating common goods against the prescriptions of the law. - But if the husband has dissipated these goods within the limits of the law, by selling or exchanging them, more probably indeed he sins against justice, because he violates the wife's right of co-ownership in those goods;[1] but, according to some,[2] in this case charity indeed is violated, but not justice. - In practice, the former opinion is to be advised before the fact; after the fact, that which has been done according to the latter can be tolerated. - But to prevent the dissipation of goods, the wife can request separation.

[1] Marres, I, n. 69.

[2] Carriere, n. 276.

§ IV. On the Dominion of Secular Clerics.

Here there is question only of seculars; concerning Regulars, however, the question will be treated in the Treatise on the Various Obligations of States.

[3] Thomassin, *Anc. et Nouv. Discipline*, Paris, 1725, t. III, l. III, h. 26-46; Lugo, disp. IV; Molina, Tract. II, disp. 143-148; Lessius, lib. II, c. 4, n. 51; Billuart, diss. III, art. 5; St. Alphonsus, lib. IV, n. 490-492; Carriere, I, n. 148-194; Ballerini-Pal., n. 38-42.

166. I. Preliminary remarks concerning the various species of goods of clerics. Goods possessed by clerics can be of four kinds: -

1. Patrimonial, or profane, goods, i.e., those which come to them from parents or others either by inheritance or donation, etc.; or those which by their own labor or industry they gain, by exercising an art distinct from sacred duties, e.g., by writing books, making statues, etc.
2. Casual, or quasi-patrimonial, goods, which accrue to them from labor spent in exercising ecclesiastical duties, such as Mass stipends, offerings received on the occasion of preaching or of the administration of the sacraments, stole revenues, etc.

167. 3. Ecclesiastical goods, namely the revenues which come from ecclesiastical benefices, or from those goods which are proper to the Church; pensions which are paid by the Government for ecclesiastical goods unjustly taken away, or supplements which are paid out by the community for the suitable support of clerics, if by public authority they are substituted in place of benefices.[4]

[4] Thus, e.g., in France what is called *denier du culte*.

4. Parcimonial goods, namely those which, by living sparingly, clerics reserve for themselves from ecclesiastical revenues which they licitly could have consumed for honorable support.

II. Principles Concerning the Goods of Clerics.

168. First principle: Clerics have full dominion of patrimonial, casual, and also parcimonial goods. It is certain.

(A) With regard to patrimonial goods there is no difficulty: by natural right they belong to clerics; who, moreover, have emitted no vow of poverty, nor by any positive law are they deprived of the free disposition of these goods.

(B) Casual goods, or quasi-patrimonial goods, according to the common and in practice safe opinion, belong to clerics. For they are given by the faithful not indeed as the price of a sacred thing, but as compensation either for labor expended on the occasion of a sacred thing, or for expenses which clerics had to incur while preparing themselves to exercise sacred duties rightly, or by reason of gratitude. Now it is by no means established that the intention of the faithful is that clerics spend these offerings for pious uses; rather, from the circumstances they are judged to have given these absolutely, without any condition; therefore clerics are able to dispose of them at will.

169. Nevertheless the Church could make laws about this matter, which would have force in conscience, as in fact she made laws in the first centuries of the Church, and also in our days in certain dioceses: for the good of the Church can require this.

With regard to the division of casual goods between the pastor and his vicars, nothing is prescribed by the general law of the Church; hence particular Statutes, legitimate customs of places, and the intention of the faithful are to be attended to.

170. When there is question of offerings which are truly owed, e.g., on the occasion of marriage or a funeral, ordinarily it is defined by the Statutes what is owed, and what part is to be assigned to the pastor, to the vicars, or to other ministers: this law must be stood by altogether in conscience.[1]

[1] In the Paris Statutes (*Statuts Synodaux* 1902, n. 580), it is rightly decreed that priests who demand more than has been determined by the Bishop act unjustly and are bound to restitution; in the same place (n. 581) it is recommended that casual rights are not to be exacted too rigorously, nor vindicated before tribunals without episcopal license; and (n. 583) that nothing is to be demanded from the poor, lest perhaps they be kept away from the sacraments.

If there is question of spontaneous offerings, and nothing has been defined concerning them, either by law[2] or by custom, the intention of the faithful must be attended to, since it is free to them to give

something or not, and to whomever they wish. Generally they intend to bestow this offering on the priest himself who performed the sacred rite; but in a case of doubt, their will can be discreetly explored by this or a similar question: Do you wish to give this to the pastor, or to me?

[2] In the United States of America, concerning this division various laws are found in various dioceses: (a) in certain ones, e.g., Trenton (*Statuta*, n. 353-354), the alms which are paid out on the occasion of baptism, marriage, nuptial Mass, a sung Requiem Mass, all yield to the rector or pastor; he uses these to pay the expenses of the parochial house, and to supply suitable support to the vicars; if anything is left over, it is divided equally between the rector and his vicars. (b) In others, however, e.g., Baltimore and Wilmington (*Stat. Wilmington.*, n. 282), alms of this kind are contributed in common, and then are divided so that, if there is one vicar, two parts yield to the pastor and one to the vicar; if there are two vicars, one half part yields to the pastor, and the other half is distributed equally among the vicars.

171. (C) Parcimonial goods are altogether under the dominion of clerics; for they have a right to honorable support, and therefore make their own those ecclesiastical revenues which are necessary for living honorably; hence if, by living sparingly and abstaining from legitimate recreations, they can set aside something from those revenues which they have made their own, this can be regarded as the fruit of industry and frugality, and it belongs altogether to them.

172. Second principle: Clerics are bound under grave obligation, at least from ecclesiastical law and charity, to spend the superfluous revenues of ecclesiastical goods on pious uses. It is certain.

It is explained. Here there is question only of revenues, not however of the goods themselves; for since the Church has made these goods her own, clerics cannot alienate ecclesiastical estates without injustice. But from these revenues clerics can turn to their own use whatever is required for honorable support, since benefices were instituted primarily for this end. But what remains is called superfluous; and these things, according to all, must be spent on pious uses from the law of the Church and from charity; whether also from justice or not will be said below.

173. It is proved. (A) From authority; besides the ancient canons[1] which explicitly treat of this matter, we have the Tridentine Council, which concerning Bishops, Cardinals, and consequently other beneficiaries, decrees as follows:[2] "Let them not strive, from the revenues of the Church, to enrich their blood-relatives or household members, since even the canons of the Apostles forbid ecclesiastical things, which are God's, to be given to blood-relatives; but if they are poor, let them distribute to them as to poor persons; but let them not divert them, nor dissipate them, for their sake..."[1]

[1] See these in the Decree of Gratian, cause 12, q. 1.

[2] Sess. XXV, cap. I *de Reformat*.

[1] Today, however, from the Code, c. 239, n. 19, Cardinals can freely dispose of beneficial revenues; but, from can. 1473, other beneficiaries are bound to spend superfluous fruits for the poor or for pious causes.

(B) From the intention of donors: for they gave moneys and other goods to the Church so that they might be turned to pious uses, not however to profane uses, and therefore for the support of clerics and other pious works, not however for increasing the riches either of clerics or of their family.

174. Disputed question. (A) From this not a few canonists and theologians infer that clerics are bound from justice to spend the superfluous revenues of ecclesiastical goods on pious uses. For (a) according to the Fathers and sacred canons, ecclesiastical goods are the patrimony of Christ, the patrimony of the poor, so that clerics who spend these goods for profane uses are held guilty of rapine and sacrilege.[2] Now this signifies nothing else than that they are guilty of true injustice, and therefore are bound to restitution. (b) The faithful, in giving their goods to the Church, intended nothing else than to support clerics, relieve the poor, and foster divine worship; not however to enrich clerics or their nephews; but clerics, by accepting benefices, at least implicitly and by force of a quasi-contract, take upon themselves to execute the intentions of the donors; therefore, by dissipating ecclesiastical revenues, they violate the quasi-contract and therefore justice.

[2] Thomassin expressly reports these texts, op. cit., ch. 26-33.

175. (B) The more probable opinion, however, holds that the obligation of spending the superfluous goods of ecclesiastical goods on pious uses is not from justice.[3] For (a) before the division of ecclesiastical goods, a fourth part was distributed to clerics for their support, and what remained fell altogether under their dominion as the wages of labor; but, after the division of goods had been made, benefices correspond to this fourth part, and therefore the revenues of benefices fall under the dominion of clerics; therefore, by spending them, even contrary to the laws of the Church, they do not violate justice, but obedience and charity.

[3] St. Thomas, *Quodlibet* VI, p. 7, a. 12, ad 3; Soto, l. X, q. 4, a. 3; Lugo, disp. IV, n. 17; Lessius, l. II, c. 4, n. 43; Salmantic., c. II, n. 155; St. Alphonsus, n. 492; most recent authors.

(b) From the Tridentine Council, beneficiaries who reside in the place of the benefice and fulfill their duties make the fruits of their benefices their own; for this is drawn from the fact that those who do not reside, or do not emit the profession of faith, do not make the fruits their own; but to make the fruits one's own is the same as to acquire dominion over them; and if they truly acquire dominion of fruits of this kind, they do not sin against justice, even by squandering them.

176. Ecclesiastical goods are indeed called the patrimony of Christ, because they have been given in view of Christ; the patrimony of the poor, because the superfluous revenues must be distributed to the poor from charity; and those who dissipate these superfluous goods are held guilty of rapine, because, as was said above, n. 85-86, the Fathers with a certain oratorical exaggeration accuse of injustice the rich who do not feed the hungry.

177. Hence in practice it is permitted to follow the more benign opinion, nor are beneficiaries who have not spent these superfluous goods on pious uses to be compelled to restitution; but at the same time they are to be admonished that there lies upon them a grave obligation of applying these to pious uses, at least from charity.

Moreover, from can. 1299-1301, beneficiaries are bound to take care that sacred furnishings acquired from ecclesiastical goods be given to their own church.

178. Notes for France and the United States. (A) In France there are no longer benefices properly so called; but the Sacred Penitentiary responded several times that pensions which are paid by the

Government to pastors, even removable ones, and to canons, assume the nature of benefices, and have attached to them the obligation of spending the superfluous on pious uses, and of observing residence under penalty of not making the fruits one's own. - But since pensions of this kind are so small that they scarcely suffice for honorable support, there is no difficulty.

179. (B) In the United States of America there are neither benefices nor pensions paid by the Government; but, according to the ecclesiastical laws there in force,[1] two kinds of goods must be carefully distinguished: (a) the revenues of the church, an account of which rectors must render, namely collections made in the church, unless the Bishop has otherwise determined concerning them; likewise all things which come from the rental of pews, from the cemetery and schools; legacies, annual subscriptions, and donations made to the rector of the church either by private individuals or by societies, especially of movable things, such as furnishings, priestly vestments, gold and silver vessels, unless the contrary has been explicitly declared by the donors. From these revenues all things must be taken which are necessary for divine worship, for the support of the clergy (according to the Statutes of each diocese), and of the parish School.

[1] Concil. Plen. Baltimor. III, n. 264-283; *Statuta Baltim.*, n. 83-96, and other Statutes of each diocese.

180. (b) The goods which clerics can vindicate for themselves as their own, and which they can use and enjoy freely, namely: the fixed and determined sum of money which, under the name of salary, is assigned by the Bishop, within or outside the synod, to pastors and their vicars.[1] Priests, however, must be content with a smaller sum, if the parish or missions over which they preside cannot supply this; nor is the Bishop bound to make up the deficiency of salary, but only those things which are necessary for honorable support. Priests must collect their salary at an opportune time; if they have not collected it, nor vindicated it for themselves by a writing approved by the Ordinary or his Chancellor, they are considered by that very fact to have renounced their right.[2] - Mass stipends according to the tax fixed by custom or Statutes. - If a Mass is sung, what is above the ordinary stipend is commonly held as a stole-right and belongs to the pastor. - Offerings which they receive on the occasion of a sermon, or of another work of this kind; or donations spontaneously and explicitly made to them for their own utility.

[1] C. Balt. Plen. III, n. 273. - In certain dioceses no salary is assigned, but the special collection which is made on the days of the Nativity and Resurrection of the Lord is wholly permitted to the pastor by way of salary.

[2] C. Balt. Plen. III, n. 281.

§ V. On the Dominion of Moral Persons. — I. Notion and Species of Moral Persons.

181. Notion. A moral person in general is an aggregation of several persons,[3] who form one moral or juridical body, enjoying the perpetual right of existing and of possessing goods collectively. It is also called a society, college, association.

[3] In some regions, however, Great Britain, the United States of America, etc., one single person can be recognized as a moral person (*corporation sole*).

Species. (A) By reason of the end, moral persons are some civil, which directly pursue a temporal good, e.g., the State, Municipalities, industrial Societies, etc.; others, however, ecclesiastical, which directly pursue the spiritual good of the members or of other citizens.

(B) Again societies are either public or private, according as the good to which they tend is a common or particular good. Thus the State, Provinces, Municipalities are held as public societies; but colleges of workmen, or industrial societies, are regarded as private.

182. Now all concede that public societies can exist and possess goods by natural or civil right. And in fact among all Nations, the City and the Municipality legitimately possess certain goods exclusively and permanently.

Thus, in France, the Republic possesses two kinds of goods: certain ones which can neither be alienated nor prescribed, such as public ways, rivers, sea-shores, fortified citadels, and other things of this kind; but certain ones which can be alienated, such as places left by the sea, islands formed in rivers, goods which lack an owner, forests, public buildings. - Likewise Provinces (*Departements*) and Municipalities (*communes*) possess certain goods collectively.

The principle is that it is no more licit to invade public goods than the goods of private persons; for the right of dominion exists equally in legitimate societies and in individuals.

But with regard to common goods (*communaux*), which citizens can enjoy, the conditions determined beforehand by legitimate authority must be observed, so that in this way the rights of all may remain intact.

II. On the Right of Association Itself.

183. State of the question. That there exists in men a natural right of associating themselves is admitted by all who acknowledge that man is a social being. But the question is whether, after the institution of the City or State has been posited, citizens retain the power of forming private societies. Now not a few Politicians contend that the right of constituting such societies is not natural, but emanates from the State itself, so that no society can exist and acquire goods unless the consent of public authority is added. Hence they try to overthrow societies, especially ecclesiastical and religious ones, and unjustly usurp their goods.

[1] Fonsegrive, *La Crise sociale*, ch. V, p. 255-299; Perin, *De la Richesse dans les Societes chret.*, Paris, 1882, t. I, l. II, ch. 14, p. 359; Say-Chailley, *N. Dict. d'Economie Politique*, word Association; Rambaud, *Elements d'Economie Politique*, Paris, 1895, p. 173; Antoine, *Economie sociale*, ch. XIV, p. 384; *Revue Catholique des Institutions*, 1880, t. II, p. 486-556; 1884, t. I, p. 277; 1899, t. I, p. 289; *Revue des Deux Mondes*, Jan. 15, 1901, *La liberte d'Association*, by P. Dareste; P. Brochard, *La Mainmorte Ouvriere*, Paris, 1900.

184. Thesis: To enter private societies, with the faculty of possessing goods, even after the institution of the State has been posited, is a natural right which cannot be taken away or limited by the Government; except insofar as the public good requires this.

185. 1. To enter private societies is a natural right. For that right must be called natural to man which is necessary for cultivating his faculties, attaining happiness, and protecting

rights. But the right of private association, even after the institution of the State has been posited, is necessary for these three things.

(A) For cultivating faculties rightly, whether physical, or intellectual and moral, or even religious. (a) The physical powers of any man are very limited, so that many things are most useful to him, indeed morally necessary, which he cannot accomplish unless helped by others; thus in building houses, exercising mechanical arts, etc., one proceeds much more quickly and efficaciously if the powers of several are united together: for by the conjunction of powers energies are much increased. (b) Say the same of the intellectual and moral order: for experience establishes that letters, the liberal arts, indeed rectitude of morals, are promoted by schools, academies, colleges, and various institutes of this kind: by the mutual help which associates give one another, by conversations, exhortations, counsels, examples, and other means of this kind, they are more and more enlightened and strengthened; so that today, when a special end wishes to be obtained, immediately some society is instituted for pursuing the same. (c) Nor must one speak otherwise concerning religious matters; for in order that men may tend to God more securely, they need the exhortations, counsels, and examples of others; and this indeed is more necessary when there is a revealed religion, founded on authority, which supposes a sacred hierarchy. Therefore there exists in men the natural right of associating themselves, which the State cannot take away without unjustly depriving citizens of a means morally necessary for fruitfully exercising their faculties.

186. (B) For attaining happiness; for man, since he is a social animal, cannot be happy without social fellowship with his neighbors; for the most part, when he is alone, he experiences weariness of life; for since the good is diffusive of itself, he most greatly desires to associate with others, so that he may impart something to them, or receive something from them; he wishes to love certain persons specially, and to be loved by them; and he attains the greatest happiness by fostering mutual benevolence and compassion. Now all these things can scarcely be attained unless citizens institute private societies among themselves, in which they may be able to enjoy the fellowship of others.

187. (C) Finally private association, especially in the present time, is a morally necessary means for protecting the rights of citizens, whether against other men or against the State itself, which, because of today's centralization, is able to oppress the rights of citizens.

Rightly therefore with Leo XIII[1] one must conclude: "It is granted to man by the right of nature to enter private societies; but the state has been instituted for the protection of right, not for its destruction; and if it forbids assemblies of citizens to associate, it plainly acts in contradiction with itself, because both it and private assemblies are born from this one principle: that men are by nature disposed to gather together."

[1] Encyclical *Rerum Novarum*.

188. 2. Societies of this kind by natural right can acquire and possess goods. For he who has a right to attaining an end likewise has a right to the means. But a private society cannot be truly useful and pleasant to men unless it enjoys certain resources, by which the intended end can be obtained; thus if men associate for cultivating fields, for devoting themselves to commerce or the arts, they need money and other goods for pursuing the

work; the same is true concerning literary, moral, and religious matters: without money or other resources, neither can books be procured or distributed, nor meetings assembled, nor means employed for restraining vices or promoting religion. Therefore by natural right private societies can possess some goods.

189. Nor should it be said that these societies are useless, because in a democratic and free State the Government itself supplies all things which are desired for the exercise of faculties and the happiness of citizens. - For public authority, since it resides among men who are endowed with limited faculties and activity, cannot wisely take care of all things; it can scarcely provide for the general administration of affairs, especially since this becomes more complex and intricate day by day; hence many things, useful to the private and public good, will remain either undone or done in a very imperfect manner, unless citizens preserve the innate faculty of associating themselves and of performing those things for which the State is unequal. - Besides, if the Government wishes to attend to all things, then the activity of private persons will perish, and all the inconveniences of Collectivism (above, n. 97-98) will return.

190. Politicians further object that private societies are dangerous both economically and politically: (A) Economically, because, if they are able to possess goods, these will remain outside commerce; for since they enjoy the right of perpetual succession, the immovable goods which they have acquired are not sold or changed; this harms the public good, and deprives the treasury of taxes which are received in transfers.

191. The answer is that these inconveniences can easily be avoided: (a) for the State can circumscribe within certain limits the domains which can be possessed by private societies, lest they grow too much; now if these domains, according to the end of each society, are contained within certain limits, they bring no harm to the public good, but on the contrary render aid, since the prosperity of private societies redounds to the public good. Moreover those goods which are called of dead hand can be burdened with special taxes, which correspond to the taxes received in transfers.

192. (B) Private societies are politically dangerous, say the Politicians, because by force of the authority and resources which they obtain, they can resist the State and restrict too much the exercise of civil authority.

Resp. The State was instituted for promoting the public good, not however for destroying the legitimate activity of private persons; if it vindicates every authority to itself, then it is over with the liberty of individuals and families, and a monstrous tyranny will soon prevail. Therefore whoever is a lover of true liberty ought to desire that the omnipotence of the State be restricted by certain limits: and this can be performed in no more efficacious way than by the institution of private societies. Nor is it to be feared that in this way the authority of Government will be too much restricted; for by opportune laws the usurpations of communities can be restrained, "namely, if they pursue anything by their institution which openly disagrees with uprightness, with justice, with the welfare of the republic."[1] Nevertheless, as Leo XIII warns (l.c.), "it is necessary that it employ the greatest caution, lest it seem to violate the rights of citizens, nor establish anything under the appearance of public utility which reason does not approve."

[1] Leo XIII, Encycl. *Rerum Novarum*.

193. Various laws exist among different Nations concerning the rights and obligations of private societies.

By French civil law societies formed among private persons are permitted and juridically recognized, even without the intervention of the Government, provided they are commercial, or civil, or are instituted among farmers or workmen for protecting their rights; indeed, from the new law of July 2, 1901, all associations of whatever kind, with the exception however of religious Congregations, which cannot juridically exist unless they are approved by a special law. How much a restriction of this kind is opposed to the equality and liberty of citizens there is no one who does not see, since Congregations, far from harming the public good, on the contrary promote it most greatly, whether within or outside France. It is no wonder, therefore, that this manner of acting had already previously been condemned by the Roman Pontiffs; let Leo XIII especially be heard, Encyclical *Rerum Novarum*: "Here we consider in mind the various sodalities and colleges and religious orders, which the authority of the Church and the pious will of Christians had brought forth: with how great a salvation of the human race, history speaks down to our memory. Societies of this kind, if reason alone judges, since they have been entered for a just cause, appear to have been entered by natural right. But in that part by which they touch religion, it is the Church alone to which they justly obey... In many places the republic has violated communities of this kind, and indeed with manifold injury: since it has both bound them by the bond of civil laws, and stripped them of the legitimate right of a moral person, and despoiled them of their fortunes. In these fortunes the Church had her own right, the individual members had their own, likewise those who had assigned them to a certain cause, and those for whose benefit and consolation they had been assigned."

194. Practical conclusion. Therefore there lies upon Catholics the right and duty of using manfully all legitimate means for obtaining a wider liberty of the right of associating themselves; and in the meantime of prudently and strenuously instituting societies and colleges, according to the norm of the new law of 1901, so that, vain complaints and dissensions at last set aside, they may be able to break the strength of the enemies of the Church; for in our days, since the evil everywhere and as if in rivalry are mutually united, the good cannot vindicate their rights unless, with great heart and willing spirit, with united and federated powers, they manfully defend themselves and their rights.[1]

[1] Hence in the first Encyclical *E supremi apostolatus cathedra*, Pius X recently exhorted Catholics to institute societies among themselves: "Our Predecessors long ago approved, and sanctioned with good prayer, that Catholic men should come together among themselves into a society, with various designs indeed, but always for the good of religion. Moreover We also do not hesitate to adorn this excellent institute with our praise, and we vehemently desire that it be widely introduced and flourish in cities and fields... For the times demand action; but that action which consists wholly in observing holily and integrally the divine laws and the prescriptions of the Church, in freely and openly professing religion, and finally in exercising works of every kind of charity, with no regard for self or earthly utilities."

III. On the Dominion of Churches.

Two things must be set forth: 1. whether the Church has the right of possessing temporal things; 2. to whom in the Church this right belongs.

[1] Thomassin, op. cit., t. I. - De Angelis, lib. III, tit. 5, *De Praebendis*; Cavagnis, *Instit. Juris Publici eccles.*, 3rd ed., t. III, l. IV, c. 2, art. 7; Bourgain, *Etudes sur les biens ecclesiastiques*, Paris, 1890.

1. On the Right Which Belongs to the Church of Possessing Temporal Things.

195. Errors. (A) Certain heretics denied that the right belongs to the Church of acquiring temporal goods, because she is a spiritual society; among whom are: Arnaldus Brixinensis, in the twelfth century; the Waldenses, in the thirteenth century; Marsilius of Padua and Wyclif, in the fourteenth century; and also many Protestants, under Luther as leader, in the sixteenth century. They contended, namely, that "it is against Sacred Scripture that ecclesiastical men have possessions; that Pope Sylvester and Emperor Constantine erred by endowing the Church; that the Pope, with all his clerics having possessions, are heretics, because they have possessions, and besides all consenting to them, namely secular lords and other laymen."[2]

[2] In Denzing., nn. 486, 509, 512.

(B) But not a few modern Politicians attack the same right in a twofold way: (a) others, the bolder, hold that the Church has no right of possessing temporal things unless this power has been conceded to her; and that this faculty, once conceded, can be revoked at will, and goods previously acquired can be snatched away. (b) Others, more moderate, indeed confess that there belongs to the Church a certain right of possessing and administering temporal things, but that it must be limited by the State in the manner in which the State itself judges this opportune.

196. Thesis: The Church has the right of possessing and administering temporal goods, granted to her divinely, and therefore independently of the State. It is certain from the Code, c. 1495.

Scripture. (A) Already from the Old Testament it can be gathered that priests and levites received from God the right of possessing and administering certain temporal things. It is true indeed that in the division of the land of Canaan no part was assigned to them, because the Lord wished to be their portion and inheritance.[3]

[3] Num., XVIII, 20.

(a) But the priests had a right to the first-fruits, which were offered to God by the children of Israel;[1] the levites to the tenth part of the fruits;[2] but they were bound to give the tenth part of the tithes to the priests.[3] (b) Besides, the Lord commands the children of Israel "that they give to the levites, from their possessions, cities to dwell in and their suburbs round about; so that they themselves may remain in the towns and the suburbs may be for cattle and beasts of burden."[4] In fact forty-eight cities were assigned to the levites, of which thirteen were reserved to the priests. - From these things it is established that God, on the one hand, wished the levites to be immune from temporal cares, and on the other, wisely provided for their necessities. From which already it can probably be inferred that the right belongs divinely to the Christian Church of possessing something, so that she may provide for the necessities of ministers.

[1] Num., XVIII, 8-19.

[2] Num., XVIII, 21.

[3] Num., XVIII, 26.

[4] Num., XXXV, 2-4.

197. (B) Under the New Law nothing indeed has been explicitly defined concerning this matter, but only the general principle has been declared, namely that those who serve the altar can eat from the altar: "Do you not know 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 by the Gospel."[5]

[5] I Cor. IX, 13-14.

But the Church vindicated to herself the right of possessing from the beginning.

Thus in the first centuries she already possessed the Catacombs, in which the martyrs and departed Christians were buried; and afterward those buildings which were constructed over the Catacombs and elsewhere for celebrating the divine offices. This is surely established from various testimonies; according to Eusebius,[6] Gallienus restored to the Church temporal goods taken away in the time of persecution; the *Liber Pontificalis* likewise testifies to this, where it treats of Pope Dionysius:[7] "He divided churches among the priests, and established cemeteries and parishes of the diocese"; so also Aurelian restored to the Bishop of Antioch goods usurped by Paul of Samosata. But Constantine ordered to be restored "not only those places to which Christians had been accustomed to assemble, but also others... belonging to the right of their body, that is, of the Churches, not of individual men."[1] Besides, he donated the Lateran palace to the Roman Pontiff, and built many basilicas, which he gave to the Church; and from this time the Church acquired many temporal goods, and her rights were fully recognized by the State.[2] - Now, if in the time of persecutions she vindicated to herself the right of possessing, this power was considered to flow not from the Roman Emperors, who pursued her with hatred, but from Christ Himself.

[6] *Hist. eccles.*, VII, 13, in Migne, P. G., XX, col. 675.

[7] *Lib. Pontif.*, ed. Duchesne, Paris, 1886, t. I, p. 157.

[1] In Lactantius, *De morte persec.*, 48, P. L. VII, col. 269. - Cf. Marucchi, *Elements d'Archeol. chret.*, 1900, t. I, p. 117; Duchesne, *Les Origines chret.*, c. 23, § 4; Allard, *Hist. des Persec.*, t. II, ch. I.

[2] Gosselin, *Pouvoir du Pape au moyen age*, 2nd ed., Paris, 1845, p. 98-141; Rivet, *Du Regime des biens d'Eglise avant Justinien, specialement sous les Emp. chretiens*, Lyon, 1891; Fourneret, *Les Biens d'Eglise apres les edits de pacification*, Paris, 1902.

198. By reason. And rightly; for he who wills the end wills the means. But Christ wished the Church not only to subsist, but to advance, and to lead the Nations to the true faith. But the Church cannot perform this unless she has the right of acquiring certain temporal things. Indeed (a) she cannot subsist without ministers, who promote divine worship, preach Christian doctrine, minister the sacraments, and therefore expend themselves for the salvation of souls; but ministers cannot carry this out unless they are suitably educated and decently supported, having at least food and things with which they may be covered. (b) She cannot propagate the faith without incurring many expenses by sending missionaries to foreign Nations, distributing Catholic books, building new churches, providing for the necessities of the poor, widows, and orphans, etc. (c) For divine worship itself there are required temples, altars, sacred vestments, and other things of this kind. (d) Since the Church is a hierarchical society, there are Superiors, whose necessities must be aided; ecclesiastical tribunals,

Congregations, in one word all those things which are altogether necessary for ruling a most ample society. Therefore if Christ wished the Church to subsist and fulfill her offices, by that very fact He wished temporal goods necessary for attaining this end to be possessed. - Moreover elsewhere it has been proved (*Treatise on the Church*, n. 109) that the Church is a complete and independent society; therefore she has the right of possessing independently of the State.

199. Difficulties are solved. (A) If the Church has the right of possessing independently of the State, she will soon become richer, because ecclesiastical goods are not alienated, but are increased daily; and from this corruption will pervade ecclesiastical men.

Resp. We do not deny that abuses can sometimes creep in on the occasion of ecclesiastical goods; but from this it by no means follows that the right itself of possessing is evil and therefore must be destroyed; otherwise every right would have to be overthrown, as liable to abuses; reason itself demands that abuses indeed be removed, but not the right itself of possessing. Now the Church prevents many abuses by her laws; for, as was said above (n. 181), beneficiaries who have richer revenues are bound to spend the superfluous on good works, and thus they can enrich neither themselves nor their family. - If sometimes ecclesiastical goods are increased, likewise the number of the faithful increases, and the necessities to be relieved also increase; moreover the greatest part of pagans has not yet received the Gospel, and under this head abundant resources are required for converting the Gentiles.

200. (B) Ecclesiastical goods generally are badly cultivated and administered; and this surely does much harm to the public good.

Resp. That an abuse of this kind was not common is established historically; for Religious Orders, even according to non-Catholic writers as witnesses,[1] generally fostered the cultivation of fields most greatly, and by tireless labor and skillful industry converted deserted regions into fertile fields;[2] in fact a long possession of the same fields increases their fertility not a little, since abundant crops can be received from uncultivated earth only after many labors and a long time. - But if, from the lack of skill or laziness of certain beneficiaries, some ecclesiastical goods are badly cultivated, let the abuse be removed, while the right itself of possessing remains safe.

[1] Thus Taine, *L'Ancien Regime*, 9th ed., Paris, 1880, p. 6-7.

[2] Montalembert, *Les Moines d'Occident*, 7th ed., Paris, 1892, t. I, p. 69 sq.; t. II, p. 446-461; Martin, *Les Moines*, Paris, 1880, t. I, ch. 6; G. Kurth, *Origines de la civilisation moderne*, Paris, 1886, t. II, p. 168-185.

201. (C) If ecclesiastical estates are multiplied, then the State is defrauded of taxes, since those estates, according to ecclesiastical law, enjoy immunity.

Resp. From history it is established that this immunity was not harmful to the State. For the Church often, when public calamities were threatening, spontaneously and freely brought help to the State, so that she gave more than the Government could have demanded under the name of taxes.[3] Today, however, by taxes on dead hand and other things of this kind, ecclesiastical goods are often burdened more heavily than lay possessions. Therefore Politicians complain unjustly under this head.

[3] Viollet, *Histoire des Instit. politiques et administratives de la France*, Paris, 1898, t. II, p. 398 sq.; Bourgain, *Contribution du Clerge a l'impot sous la Monarchie francaise, Questions Historiques*, new series, t. IV, p. 66 sq.

2. To Whom in the Church Does the Right of Dominion Belong?

202. Three principal opinions have been produced concerning this matter.

(A) Certain persons, with Navarro,[1] said that the dominion of ecclesiastical goods is in the power of God and Christ, not metaphorically, but properly, so that the Church and the Sovereign Pontiff have only the dispensation of these goods, not however dominion. - Yet this opinion is today deservedly judged antiquated; for it can in no way be proved that God or Christ resumes under His own special dominion goods whose dominion He left to men from the beginning. These are indeed said to be dedicated, or donated, to God, but metaphorically, insofar as they ought to be spent in His honor, and cannot be snatched away without a special injury done to God; but dominion must remain in the power of some human person.

[1] Navarro, *De Reditibus ecclesiasticis*, q. I, monit. 40.

203. (B) Others hold, after Fagnanus,[2] that dominion of these goods is in the power of the Sovereign Pontiff, or of the universal Church, of which he is the head. Yet we judge this less probable. To the universal Church belong indeed those goods which have been specially donated to her, or were acquired by her, for the general rule of the Christian people; but not those which have been legitimately acquired by various communities canonically erected, on account of the argument soon to be set forth.

[2] Fagnan, *In lib. III Decret.*, cap. *Relatum, Ne clerici vel monachi*, n. 26 sq.

204. (C) The third opinion, and today certain from the Code, c. 1499, is that the particular dominion of ecclesiastical goods is in the power of particular churches and colleges canonically erected, to which they have been donated, as long as they remain united to the Catholic Church. - It is called particular dominion, because high or eminent dominion remains in the power of the Pontiff, who, on account of the public good, can alienate or transfer these goods, as we said of the State with regard to the goods of private persons.

205. The fundamental reason is because (a) on the one hand, parishes, communities, and colleges, by the very fact that they are canonically erected, obtain from the Church the right of accepting donations and acquiring goods; (b) on the other hand, the faithful, when they bestow these goods on some church or college, do not intend to give them to the universal Church, but to this church or community which they favor with special love. - And this is confirmed by the practice of the Church; for when doubts arise concerning the legitimate possession of this or that ecclesiastical estate, or lawsuits between two communities, the Roman Congregations are accustomed to inquire to which community or college a good of this kind was donated, and what the intention of the donors was.

206. Yet it was said: as long as the churches or communities remain united to the Apostolic See; for they received this faculty of possessing from the universal Church, nor can they retain it against her will when they are separated from her. Moreover the intention of the faithful was

to give these goods to such a parish or community insofar as it was Catholic, and therefore united to the center of Catholic unity.

207. Corollaries. (A) The Supreme Pontiff has the right of supreme dispensation of all ecclesiastical goods, and can alienate or transfer them insofar as the common good of the Church requires this.

For these goods were donated to churches or communities for promoting the good of the Church; now sometimes it happens that the good of the Church demands that these goods be transferred or ceded to others, because the colleges which enjoy them cease to exist, or abuse these goods, or because peace between the Church and the State cannot be retained or restored without a partial or total cession of ecclesiastical goods.

208. In fact the Roman Pontiffs have sometimes, although rarely, used this power; thus Clement V, in the Council of Vienne, transferred most of the goods of the Templars to the institute of St. John; Martin V, in the Council of Constance, granted to the Teutonic nation that it might retain certain ecclesiastical goods acquired simoniacally; Benedict XIV conceded to the bishops of Albania the faculty of condoning ecclesiastical goods unjustly seized to their possessors, lest otherwise these fall into apostasy; Pius VII, for the good of peace and the happy restoration of the Catholic religion in France, declared that those who had acquired alienated goods of the Church were not to be disturbed.

209. (B) These goods, from Code c. 1514, must be spent on the uses predetermined, unless the Sovereign Pontiff, by his supreme power, on account of the good of the Church, has judged otherwise. - For this is clear from the quasi-contract between the donors and the churches to which the goods were given. Moreover, if the utility of the Church demands something else, the Supreme Pontiff can interpret the will of the donors. Therefore recourse must be had to him for the commutation of pious works which can no longer be fulfilled.

Art. III. On the Various Modes of Acquiring Dominion.

210. Five modes are enumerated by which dominion can be acquired: occupation, accession, hereditary succession, contract, prescription.[1] Of these one is original, by which, namely, a thing belonging to no one, or having no owner, is acquired; and this is called occupation; but the others are derivative, by which a thing already placed under someone's dominion is acquired. Concerning succession and contract there will be treatment in the other part of this Treatise, where contracts are treated; here, however, there will be treatment 1. of occupation; 2. of accession; 3. of prescription.

[1] Labor is indeed one of the modes of acquiring; but, when it concerns one's own thing, it is reduced to the right of accession; if it concerns another's thing, it is referred to contract.

§ I. On Occupation.

211. Conditions required for legitimate occupation. (A) Occupation is the apprehension of a thing which belongs to no one, with the intention of making it one's own. - Four conditions, therefore, are required so that occupation may be a legitimate mode of acquiring: (a) that the

thing occupied belong to no one; for if it has a legitimate owner, the occupation of it, while the owner is reasonably unwilling, is furtive; (b) that the thing be truly and really apprehended: yet this apprehension can be actual or moral, according to the nature of the thing or civil laws; (c) that the one occupying have the intention of making the thing his own; for if he has another intention, e.g., of passing through such a place, or of spending the night in a house for some days, dominion is not acquired; (d) that this intention be manifested exteriorly: otherwise it can neither be known nor proved, and therefore cannot oblige others; what external signs are required will be set forth below.

[2] Lugo, disp. VI, n. 40-152; Molina, disp. 40-56; Lessius, lib. I, cap. 5, n. 28-67; Billuart, diss. IV, art. 2; St. Alphonsus, n. 602-605; Carriere, n. 285-360; Ball. P., n. 56-108; Lehmk., n. 906-916.

Today the right of occupation is greatly limited, since there are few things altogether belonging to no one, and generally by civil law it is determined to whom vacant goods belong.[1] Three things remain concerning which inquiry can be made: animals, treasures, things lost or abandoned.

[1] Cf. Civil Code, art. 539 and 713, Supplement, p. 47*.

I. On the Occupation of Animals.

212. Three kinds of animals can be distinguished in relation to occupation: (a) wild, or sylvan, which enjoy natural liberty and have no owner; such as lions, eagles, vultures, hares, fish, etc.

(b) Tamed, or trained, which, although by themselves of a wild nature, have been subjected to dominion by human industry, such as doves returning to the dovecote, bees in a hive; to these can be added wild animals enclosed in places from which they cannot escape.

(c) Tame, or domestic, which are so accustomed to the society of men that they no longer flee from the power of the owner, but serve domestic uses, e.g., sheep, hens, dogs, horses, etc.

1. On the Occupation of Wild Animals.

213. Principles. Wild animals, which enjoy native liberty, become the property of the first occupier; for they truly belong to no one, and therefore can legitimately be occupied and retained by the successful captor. But they are judged occupied when they are so placed in the power of the hunter that they cannot escape. But if, after they have already been captured, they recover their liberty, they again become the property of no one: which happens when they have escaped and can be apprehended again by the former owner only with great difficulty.

214. Corollaries. (A) From this it can be inferred what must be said of a wild animal wounded by one person and captured by another; for if it has been so wounded that it cannot escape the hunter, it is truly placed under his power, and cannot legitimately be captured by others; but if it can flee, or the hunter has ceased to pursue it, it is judged to have recovered its liberty, and can be retained by the first occupier.[2] Thus most civil laws,[3] which in this matter must be obeyed.

[2] The same distinction applies to a wild animal caught in a snare: if it cannot escape, it belongs to him who set the snare; but if it is now soon going to escape, it becomes the property of the first occupier, although equity would suggest

that it be divided between him who set the snare and the one capturing it, since each cooperated toward capturing the wild animal.

[3] For France, see Villequez, *Droit du chasseur sur le gibier*, 2nd ed., 1884; more briefly Planiol, I, n. 1248-1252, in Supplement, p. 48*.

215. (B) With regard to those who hunt on another's land, these things must be established: (a) If the land is open, although the owner can prohibit anyone from invading his fields for the sake of hunting, wild animals captured there do not belong to the owner of the land, but to the hunter; nevertheless the owner can demand that damages inflicted on the land be compensated.[1] - But if another's land is enclosed and so fenced for the custody of animals that all are truly placed under the power of the owner, he who occupies them sins against justice and is bound to restitution. - If the place is indeed enclosed, but ample, justice is indeed injured, but strictly speaking only those animals must be restored which the owner himself could have captured; and at the same time damages must be repaired which happen from the fact that wild animals are not multiplied as the owner could legitimately expect.

[1] By French civil law, if a wounded wild animal flees onto another's land, the owner of this land can prohibit the hunter from capturing the wounded animal there. Thus Cassation, Apr. 29, 1862, in Planiol, n. 1252, in Supplement, p. 48*.

216. (C) Fish which live in the sea or in rivers which can be navigated are the property of the first occupier, at least by natural right. But in smaller rivers, or all the more in private ponds, the right of fishing is generally reserved to the neighboring owners of the banks; concerning this see the civil laws.[2]

[2] For France, consult Planiol, n. 1253-1261, in Supplement, p. 48-49*.

2. On the Occupation of Tamed Animals.

217. (A) Tamed animals remain under the dominion of the one possessing them as long as they have not escaped his custody, nor lost the habit of returning. But if for a notable time they have lost the habit of returning, e.g., if doves have taken refuge in another dovecote, they have now recovered their liberty, and become the property of the first occupier, i.e., in the case mentioned, of the one into whose dovecote they fled.

Hence a swarm of bees cannot be occupied by another as long as the owner has probable hope of recovering it; but if he has ceased to pursue it, it can legitimately be captured by another.[3]

[3] In this matter civil laws must be attended to; for France: Civil Code, a. 564; Law of April 4, 1889, a. 9.

To use frauds and artifices for drawing to oneself and occupying trained animals is unjust, and often causes grave dissensions. - But what comes under the name of fraud must be determined by civil laws or custom.[1]

[1] In the time of sowing and harvest doves must be enclosed, lest they inflict damage on fields; and if they are not enclosed, every owner has the right of killing them on his own land and making them his own (Law of Aug. 4, 1789, a. 2).

3. On the Occupation of Domestic Animals.

218. Tame animals remain under the dominion of him to whom they belong, even if they have wandered away; for since they have never had their liberty, they are truly the object of a permanent dominion; and if they have been lost, they must be restored to the owner, even dead; and this holds even if they have been rescued from destruction by the industry of the one occupying them.

By French civil law (Law of April 4, 1889, a. 5), farmyard animals (*animaux de basse-cour*) which have taken refuge with another owner can be acquired by accession, after one month computed from the day on which this other owner declared before the mayor (*maire*) that these animals had been received by him. For this to hold in the forum of conscience, it is necessary that the first owner remain unknown;[2] indeed natural equity at least suggests that these animals be returned to the owner, if he has certainly been known, even after several months have passed.

[2] If domestic animals inflict damage, the owner is bound to compensate it; if birds do this, they can be killed by the owner of the land as long as they are on the land itself (Civil Code, a. 1385; Law of Sept. 28 - Oct. 6, 1791, tit. II, a. 12).

219. Corollary: on the violation of civil laws concerning hunting and fishing. The faculty of hunting and fishing is restricted by civil law in various ways. (A) He who hunts without due license, of itself indeed sins against legal obedience, but only lightly, because there is no question of a grave matter; indeed often not even lightly, because many are persuaded that this law is merely penal. Therefore under this head there is no place for restitution, since no strict right of anyone is violated.

220. (B) But he who hunts or fishes at a prohibited time or place sometimes sins against justice, and indeed gravely or not, according as the damage inflicted was grave or light. For such a prohibition is often made on account of a motive of public or private utility, namely lest animals be notably diminished, with detriment to the republic, or lest the crops of private persons be destroyed, or their rights of hunting or fishing invaded; therefore violators of these laws inflict damage either on the community or on private persons, and under this head sin against justice; but the gravity of the sin depends on the gravity of the damage inflicted; hence the principles to be set forth below concerning the damager must be applied.

Hence hunters who frequently devote themselves to illicit hunting (*braconniers, poachers*) of themselves sin gravely, both on account of the damage inflicted on others, and on account of the danger which they incur of repelling by force and wounding the keepers of the forests.

II. On the Occupation or Discovery of Treasure.

221. 1. Notion of treasure. Treasure can be defined as a noble, precious, and hidden thing, whose owner cannot be found. Two things therefore are required: (a) that the precious thing truly be hidden, not found in an open place; otherwise it will be a lost thing, not however a treasure; (b) that it can rightly be presumed a thing belonging to no one; hence, if someone can prove that he is the owner of this thing, it is not a treasure.

222. 2. To whom does treasure belong? (A) By natural right, it belongs wholly to the finder: for since it is a thing belonging to no one, it becomes the property of the first occupier. But

he is deservedly called the finder who, whether through himself, or through another hired for this end, first discovers it, or renders it visible, although he has not yet apprehended the same by hand.

The reason is that treasure cannot be regarded as a thing of the owner of the land, since it is not established that it was hidden there by his ancestors; nor as a thing of him who hid the treasure, since by hypothesis he cannot be found; therefore treasure truly belongs to no one, and consequently to the first occupier.

223. (B) But civil law can determine something concerning this matter which obliges in conscience, since there is question of a temporal matter belonging to the State. (a) Now in France, and in many other regions, treasure found in another's land is divided equally between the finder and the owner of the land.[1] This law is equitable; for there is some presumption that the treasure was hidden by the ancestors of the owner, especially when possession of the land was continued in the same family for a long time; moreover the State can define to whom goods belong whose dominion is uncertain; therefore the civil law in this case obliges in conscience, even before the sentence of the judge.

[1] Civil Code, art. 716; Planiol, I, 1268-1271.

224. (b) By French civil law it is prohibited that the lands of others be dug up for finding treasures; if, therefore, someone by design and without the owner's consent has sought and found a treasure in another's land, he must hand over half part to the owner of the land, from what has been said; and moreover he is deprived of the other half part of the treasure: nevertheless this latter disposition is commonly held as penal, and therefore does not have force in conscience before the sentence of a judge.

He who buys a field at the common price, in which he suspects a treasure lies hidden, uses his own right, nor is he bound to divide the treasure found with the former owner of the land; but it must be said otherwise of him who hides a treasure already found, and, after buying the field, vindicates the whole for himself; for by the very fact that he finds it, he is now bound to hand over half part to the owner.

III. On the Occupation of Lost Things.

225. Notion. Lost goods are called those which, while the owner is unwilling, have fallen out of his possession although they are not hidden. - They differ from treasure in that they are not hidden by design, and moreover it is often possible to find their owner.

1. Principles of Natural Right.

(A) A lost thing remains under the dominion of him who involuntarily lost it as long as he has reasonable hope of recovering it; but if, all things considered, he does not retain such hope, or, in other words, if it is morally impossible to find the owner, the lost thing becomes no one's, and can be legitimately retained by the finder.

Certain theologians indeed contended that even in this case the owner retains his right in the lost thing; but today this is commonly denied; for in the case mentioned it is impossible that dominion be exercised with regard to the lost thing, and the public good demands that this be occupied and so serve human uses.

226. (B) The finder is not bound from justice to take up a lost thing in order to guard it; but he is often bound to this from charity, namely when the thing otherwise is going to perish. - But if he has taken it up, he is bound from justice, according to the common opinion, (a) diligently to preserve the thing as a good father of a family; (b) more probably diligently to inquire about the owner, with diligence proportioned to the value of the thing found, not at his own expenses, but at the owner's. This twofold obligation arises from a quasi-contract by which, in apprehending the lost thing, he takes upon himself the obligation of caring for it as a good father of a family.

227. (C) If the owner appears before the time required for prescription, the thing must be returned to him, with the expenses however deducted which the finder underwent for the custody of the thing or the inquiry into the owner: for he made these as the owner's mandatory. - Nothing more is owed from justice to the finder, unless some reward has been promised.

228. (D) If, after diligence has been applied, the owner does not appear nor is there probable hope of finding him, the finder strictly speaking can retain the thing, because it can be held as a thing belonging to no one. But if he has disposed of it, and afterward the owner appears before the time of prescription has elapsed, the finder is bound to nothing except insofar as he has become richer from it, as will be said below concerning the possessor in good faith. But when the time necessary for prescription has elapsed, the thing becomes the finder's.

But if someone has culpably neglected to inquire about the owner, or all the more has hidden the thing lest perhaps the owner recover it, he is now a possessor in bad faith: concerning whom it will be said below.

229. Formerly theologians commonly held that a lost thing whose owner could not be found had to be spent on pious uses; for the owner of the lost thing has not lost his rights, and therefore it is not licit to use this except according to his presumed will; but the owner is presumed to wish that the thing be spent on pious uses, and so profit him spiritually.

But most modern theologians deny this; for (a) it is by no means established that dominion of the thing remains in the power of him who lost it without probable hope of recovering it, as was said above; (b) moreover it is not established that such is the presumed intention of the owner; this perhaps was the mind of the faithful in the time when faith and charity prevailed; but today there are few who care about this matter; they desire one thing, namely that the thing be faithfully preserved, so that it may be returned to the owner, if at some time at last he becomes known. - Hence in practice, distribution to pious uses is not to be imposed.

230. 2. Prescriptions of civil law. Where by civil law provision is made concerning lost things, its prescriptions must be observed. Now in France there are various laws not indeed concerning all but concerning certain lost things.[1] Besides, in many cities Municipalities

have ordered that lost things be brought to a certain place: these statutes indeed are not determinative of property, and therefore do not oblige from justice; but it is equitable to obey them.

[1] Cf. Planiol, I, n. 1282-1286. - See Supplement, p. 50*-51*.

IV. On the Occupation of Abandoned and Vacant Goods.

231. Notion. Those things are called abandoned which the owner has voluntarily renounced from himself, nor transferred their dominion to others; e.g., fruits which, when the harvest has already been completed, have been left behind; dry wood which lies on the ground; old rags which are thrown away, etc.

Vacant goods are those which, when the owner has died, become no one's, because on the one hand the deceased did not dispose of his goods by testament, and on the other there are no heirs who can or wish to accept the succession.

232. Principle. By natural right, these goods, as belonging to no one, can legitimately be occupied by the first occupier.

But in most regions civil law establishes that abandoned and vacant goods devolve to the State,[1] with the exception however of movable things of little importance. This law is consonant with reason, and is to be observed in conscience, at least after the sentence of a judge, according to all; indeed more probably even before this sentence, because a law of this kind is not penal, but determinative of property.

[1] For France, cf. a. 539 and 713 Civil Code; Planiol, I, n. 1243-1246.

233. But things lost by shipwreck (*epaves*) or thrown into the sea to save a ship, or carried away by inundation, are by no means to be held as abandoned: for the owners did not freely and spontaneously reject them, but wish to retain dominion over them insofar as they can; concerning these, therefore, the same thing must be said as concerning lost things. Hence civil laws[2] generally punish with severe penalties those who snatch away these goods; and deservedly, especially when it is known to whom these things belong; for theft in this case assumes a certain species of cruelty.

[2] For France, Civil Code, art. 717; Planiol, n. 1279.

§ II. On Accession.

234. Accession is a mode of acquiring dominion, by force of which the owner of some thing, movable or immovable, legitimately acquires all those things which his thing produces, or which are united to it. - It rests upon these two principles: A thing fructifies for its owner; - the accessory follows the principal. - Hence the right of accession arises under a twofold head, from production and from union.

[1] Lugo, disp. VI, n. 153-174; Molina, Tr. II, disp. 57; Billuart, diss. IV, a. 2, § 8; Carriere, I, n. 369-394; Crolly, disp. XXVIII, n. 639-640; Kenrick, Tr. X, n. 67-74; Ball. P., n. 109-137; Lehmk., n. 916; Haine, q. 65-66.

I. On the Right of Accession in Those Things Which Are Produced, or Fruits.

235. Principle. He who obtains full dominion of some thing has a right to all the fruits arising from the same, according to that saying: A thing fructifies for its owner; and deservedly, since full dominion imports the right of enjoying. But if dominion is divided, so that one has the right of disposing, but another the right of enjoying, this latter will make the fruits his own, as was said where usufruct was treated (n. 126).

236. Species of fruits. Now four kinds of fruits are distinguished: - (a) natural fruits, which arise spontaneously without any or almost any labor, e.g., hay, certain trees, some apples hanging from trees; but there are very few altogether in our regions which grow without any labor; (b) industrial fruits, which are produced only by cultivation, such as certain crops and legumes, wine, etc. - Often fruits are mixed, since they are begotten partly by nature, partly by labor; (c) civil fruits, which do not arise from the thing itself, but come from a contract entered concerning this thing, e.g., the price of leasing, annual revenues, pensions, profit received from loan;[2] (d) offspring of animals, that is, young born from animals; in this matter the principle must be followed: the offspring follows the womb, or he who legitimately has the mother obtains the right to the young born from her.

[2] With regard to French civil law, cf. Civil Code, a. 583-584; Planiol, I, n. 1619-1625; Supplement, p. 51*.

II. On the Right of Accession from the Union of Things.

This kind of accession can occur both with regard to movable things and with regard to immovable things.

1. On Accession with Regard to Movable Things.

This can happen in three ways: by adjunction, specification, and commixture.

[1] Civil Code, a. 565-577; in France there is scarcely room for the application of these rules, on account of another rule to be set forth below: "In the matter of movables possession is equivalent to title." Cf. Supplement, p. 54*. - The rules which we hand down here are taken from Roman civil law, but are accepted by most Nations, as consonant with reason.

237. (A) By adjunction, by which things belonging to different owners are so united that they cannot be separated without detriment; e.g., a gem inserted into a gold ring, an image expressed on another's canvas, a poem written on another's paper. - The principle is that the whole thing belongs to the owner of the principal thing, under this condition, however, that he indemnify the owner of the other thing; for the accessory follows the principal. But what is accessory and what principal must be defined by the common judgment of prudent men, or by custom, or by civil law; e.g., a painting is certainly something principal in relation to the canvas upon which it is painted.

238. (b) By specification, by force of which from another's material a thing of another species is made, e.g., if a statue is made from another's marble, shoes from leather belonging to another, etc. The general rule is that the owner of the material has the right of keeping the thing thus effected, by paying the price of the labor, - unless, however, the work expended far exceeds the

price of the material, e.g., if someone from cheap wood carved a most beautiful statue: in which case the artisan can retain the thing, after paying the price of the material.

239. (c) By commixture, which is the conjunction of several things equally principal belonging to different owners, as if two heaps of wheat, two vats of wine, are mixed. - The principle is that the things mixed become the common property of the owners according to the proportional part of each. Hence, if they can be separated, let his own part be returned to each owner; otherwise, either the mixed things must be divided according to the proportional part of each owner; or the whole must be sold, so that the money may be divided according to the proportional part of each.[2]

[2] In some regions, such as England and the United States of America, civil law establishes that he who in bad faith has mixed his own goods with those of another loses the right of recovering his own. This law, as penal, does not oblige except after the sentence of a judge; and often the rigor of the law is tempered by judges.

2. On Accession with Regard to Immovable Things.

240. This accession can happen either by human industry, namely by building, planting, or sowing; or by nature, namely by alluvion and change of channel.

(A) In the former case, dominion of the soil draws with itself dominion of those things which are built, planted, or sown on it even by others: for all these things are judged to have been made at the expense of the owner. Nevertheless natural equity demands that he who in good faith has built, planted, or sown something on another's land should receive compensation for the labor and material employed, at least insofar as the owner has become richer from these.

Moreover civil law in various regions establishes many things concerning this matter, which oblige in conscience, as being determinative of property.[1]

[1] Civil Code, a. 552-555; Planiol, I, n. 1519-1546.

241. (B) In the latter case, namely when accession happens through alluvion, change of channel, or formation of islands, these things generally are admitted in various regions as consonant with natural right: -

(a) Whatever is added little by little to an adjacent bank, - by the recession of the sea, a lake, or a river, - is legitimately acquired by the owner of the land which adjoins the bank;[2] for it is equitable that the owner of the land retain those things which naturally accrue to this land, all the more because at another time he may lose something of his estate.

[2] In France special rules exist with regard to alluvions of the sea, lakes, and ponds; Civil Code, a. 557-558; Planiol, I, n. 1517; Supplement, p. 52*.

(b) But if by a sudden rush of waters a large part of some land is torn away from it, the owner of the land does not lose his rights, and can vindicate this torn-away part for himself.

(c) When a river, its course having been changed, leaves its channel, the abandoned channel is legitimately acquired by those whose fields have been submerged by the river: for it is equitable that compensation be assigned to them according to the proportional part of the damage.

242. (d) Islands which are formed in rivers belong to the owner of the nearer bank. - Hence in many regions a distinction is made between navigable rivers and others: islands which are, as it were, created in navigable rivers yield to the Republic, which has the right of dominion over these rivers; - those which are formed in other rivers are legitimately acquired by the owner of the nearer bank; but if they are in the middle of the river, they are divided between the owners of the banks on each side; and the boundaries of the dominion of each are determined by a line which is supposed to be drawn through the middle of the river, or, as they say, through the middle thread of the water.[3]

[3] Civil Code, a. 559-563; Planiol, I, n. 1515-1518.

§ III. On Prescription.

243. State of the question. Prescription is a mode of acquiring dominion, or of freeing oneself from an obligation through a certain lapse of time, and under conditions determined by law or custom.

[1] Lugo, disp. VII; Lessius, lib. II, c. 6; Molina, Tr. II, disp. 60-80; Billuart, diss. IV, art. 3; St. Alphonsus, n. 504-517; Carriere, II, n. 395-500; Ball. P., n. 133-221; Marres, lib. I, n. 400-427; Lehmk., n. 917-927; Noldin, n. 389-397; Thiers, *De la Propriete*, l. I, ch. 13-14; Pothier, *Traite de la Prescription*; Troplong, *De la Prescription*; Planiol, I, n. 1391-1508.

From this it follows that prescription is twofold: acquisitive, by which dominion or right is acquired; liberative, by which someone frees himself from an obligation. The former is deservedly called usucapion.[2]

[2] Often prescription and usucapion are taken indiscriminately; but strictly, by force of the terms, prescription extends more broadly than usucapion, since the latter is limited to those things which are taken or acquired by use, while the former extends itself to those things which are obtained by use or non-use.

Now civil and canonical laws plainly acknowledge that prescription is a legitimate mode of acquiring. But the question is whether this mode is consonant with equity and has force in conscience. It would indeed be difficult to prove, if natural right alone is inspected, that dominion is transferred by long possession. But the right of nature permits this and approves it as very useful to the good of society; and supreme authority, by force of high dominion, completes natural right and confers obligatory force in conscience upon prescription, provided that it is clothed with certain conditions to be set forth below.[3]

[3] Certain persons, however, hold that prescription arises from natural right alone, at least when it is immemorial; others from the Law of Nations; others from civil law alone. Cf. Carriere, n. 402-409.

We shall speak 1. of the legitimacy of acquisitive prescription; 2. of the conditions required for it; 3. of liberative prescription.

I. On the Legitimacy of Acquisitive Prescription.

244. Principle: Prescription, clothed with the due conditions, is a legitimate mode of acquiring dominion, even in the forum of conscience. It is certain.

Indeed, for the legitimacy of prescription in conscience, it suffices that the supreme civil authority could and wished to confer this force upon it. But both are established: -

245. 1. Civil authority could do this; for the State, by force of the high dominion which it has over the goods of subjects, can perform that which favors the public good and moreover of itself injures the rights of no one. (A) But prescription, with the conditions to be set forth below posited, promotes the good of society most greatly. For it is of very great importance that dominions not remain uncertain, nor lawsuits concerning the property of things be perpetual; for if they remain uncertain and lawsuits are feared, fields are either neglected or at least are not cultivated with that industry which the utility of society demands; besides, the peace of families is disturbed, since it is to be feared lest those who judge themselves richer soon, through a lawsuit, be expelled from the house which for a long time they judged to be their own, and be despoiled of goods formerly possessed. Now, unless prescription is admitted, dominions will not rarely be uncertain; for sometimes the title is lost, nor can the legitimacy of this or that dominion easily be proved except with the help of prescription; moreover the title can be attacked as defective, and, when there is question of a fact which occurred already a long time ago, the difficulty will be solved with difficulty, and therefore lawsuits concerning the legitimacy of this or that title will be innumerable and perpetual unless the obligatory force of prescription is acknowledged. On the contrary, if long possession, clothed with certain conditions, is equivalent to title, it will be much easier to solve lawsuits and to define rights certainly.

246. (B) Moreover prescription of this kind of itself injures the rights of no one. That its equity may be judged, it must be considered not in one particular case, but in general and of itself. But of itself, before every event, it favors one no more than another; namely each has an equal fear of losing or hope of gaining. This can be illustrated thus: if the citizens of some republic by common consent established that goods should become his who possessed them in good faith for a long time, no one could think himself injured: for this would be an aleatory contract, before the event favoring all equally and therefore most equitable. Now what citizens can establish by pact, the legislator can decree in the name of all, provided that the public good demands it. Moreover citizens, in accepting this law, implicitly enter an aleatory contract among themselves.

Indeed prescription of itself profits all; for it renders each more vigilant and more diligent; for not a few would indulge in negligence and laziness, and sometimes would leave lands uncultivated, unless by fear of prescription they were compelled to assert their dominion and vindicate it by exercising certain acts. - Therefore prescription greatly contributes both to private and to social good; therefore the State could assign obligatory force to it in the forum of conscience.

247. 2. Supreme authority wished this. This is established:

(A) From the end of the law: for the law tends to promote public peace and security;[1] but such an end cannot be attained unless prescription has force in conscience; otherwise pious and honorable persons would labor under anxieties, while others less honorable would use the benefit of the law without scruple; and thus the law would serve to ensnare consciences.

[1] That this was the intention of the legislator in composing the French Code is clear from the speeches given before the Legislative Assembly; cf. *Code et Motifs*, t. VII, p. 134 sq.

(B) From the words employed in the law and from the interpretation of jurists. For the words used in various Codes either suppose or even openly declare that dominion is truly transferred or acquired;[2] indeed in certain regions a distinction is made between prescription properly so called, which transfers rights, and prescription improperly so called, by which the time is limited within which rights can usefully be vindicated before judges,[3] without however being lost in this case; from which it is deservedly inferred that by prescription properly so called dominion is truly transferred, even in the forum of conscience. - This is confirmed by the testimony of jurists, many of whom explicitly teach that prescription has force in conscience, provided good faith has endured for the whole time of possession.[4]

[2] For France this is established from these or similar words: "Prescription is a means of acquiring or of freeing oneself by a certain lapse of time ... One cannot renounce prescription in advance ... Prescription can be opposed at every stage of the case, even before the court of appeal..." (Civil Code, a. 2219-2224, in Supplement, p. 55*-56*).

[3] Thus in England and the United States of America.

[4] In Carriere, n. 420.

248. (C) To these arguments there is added the authority of canon law, insofar, namely, as it asserts or supposes that prescription has force in the forum of conscience: "The sanctions of the holy Fathers and human laws, establishing irrefragably, have confirmed, and we in the present council, with all who are with us, irrefragably confirm, that all possessions belonging to the individual provinces of our brothers, by whom they have been possessed for thirty years, shall be held quietly and sincerely, without synodal proclamation, perpetually, and no voice of being heard shall be conceded to any adversary."[1] Likewise the Fourth Lateran Council defines "that no prescription, canonical as well as civil, is valid without good faith, since generally every constitution and custom is to be derogated which cannot be observed without mortal sin";[2] from which it is inferred that even civil prescription with good faith is valid. - Now if Pontiffs and Councils held prescription introduced by Roman civil law as legitimate in the forum of conscience, the same reason holds concerning that which modern Codes establish, which have imitated the Roman law in this matter. - The Code sanctioned this doctrine, c. 1508.

[1] Decretal. Gregor. IX, l. II, t. 26 *de Praescript.*, c. 3, p. 382-383, ed. Richter-Friedberg.

[2] In Denzing., n. 364.

II. On the Conditions Required for Acquisitive Prescription.

So that acquisitive prescription may be valid, five conditions are desired, expressed in these verses:

You shall not acquire by usucapion, unless you have these five things:

Let the thing be apt, faith, title, possession, time.

249. 1. An apt thing, that is, one which by its nature is capable of private dominion, and at the same time is not excluded by positive law from the scope of prescription. Now (a) things deputed to public uses, such as public roads, squares, bridges, etc., cannot be prescribed by private persons, because from the fact that they are destined to public use, they cannot be acquired by private persons, as is established from the law in force among

various Nations; nevertheless they could be prescribed by one community against another community.

(b) Sacred things which are in the dominion of private persons can be acquired by prescription by private persons, but not for profane uses; those which are not in the dominion of private persons can be prescribed not by a private person, but by an ecclesiastical moral person against another (Code, c. 1510).

(c) Likewise ecclesiastical law prohibits certain things from being prescribed, on account of the public good, e.g., the certain boundaries of a diocese or parish legitimately constituted.[1]

[1] Others are enumerated in the Code, c. 1509, especially: those which are of divine right or can be obtained from apostolic privilege alone; spiritual rights, of which laymen are not capable, if there is question of laymen; alms and Mass obligations; an ecclesiastical benefice without title; the right of visitation and obedience; payment of the cathedraticum.

(d) Likewise civil laws often impede certain goods from falling under prescription; thus, e.g., the dotal goods of wives under the dotal regime, the goods of wards. On this matter civil Codes should be consulted.

250. 2. Possession, that is, occupation and detention of the thing, or exercise of the right. This indeed is so necessary that without possession prescription does not proceed.[2] But in order that it may be valid, it must be fortified with certain qualities; indeed it must be:

[2] Rule of law 3 in the Sext.

(A) With the intention of an owner, not however with the intention of a depositary or usufructuary, etc.; for there is question of dominion legitimately acquired; but he who knows the thing is not his, but deposited, or leased, etc., cannot legitimately acquire it. - Hence he who possesses a thing in his own name prescribes for himself; but he who possesses in another's name, as a tutor in the name of a ward, prescribes not for himself but for the ward; but he who detains a thing through another, e.g., a servant, a procurator, can acquire it for himself.

251. (B) Peaceful and continuous; for if it is violent, it is not possession, but invasion;[3] nor does useful possession begin except when the violence ceases; - but if it is suspended or interrupted before the required time has already elapsed, one of the conditions required for prescription is lacking. Now there is this distinction between suspension and interruption: (a) the former indeed prevents prescription from running, on account of the prescription of the law, - when, e.g., there is question of the goods of minors or of wives; - but when the impediment has now ceased, the time preceding the suspension is joined with the time following. (b) The latter exists when one of the conditions necessary for prescription is lacking, - e.g., if good faith ceases, or the owner usefully opposes; - and so harms prescription that the time which had previously elapsed is held as nothing.

[3] Ball. P. indeed says (n. 173) that this is not required by natural right, but is drawn from the French Code; but in this the French law is consonant with natural right, as there is no one who does not see. Cf. Supplement, p. 56*.

252. 3. The required time, which is determined not by natural law, but by positive law, canonical or civil.

(A) By canonical law, (a) the goods of the Roman Church, both precious movable goods and immovable goods, are not prescribed except by the space of one hundred years.[1]

[1] Code, c. 1511, § 1.

(b) Immovable goods of other churches, monasteries, hospitals, and other religious places are prescribed by thirty years;[2] precious movable goods are to be equated with these. - Certain monasteries enjoy a special privilege; thus against monasteries of the Benedictines one cannot prescribe except by sixty years; against monasteries of the Cistercians and Mendicants except by one hundred years.

[2] Ibid., § 2.

(c) Movable goods of other churches are prescribed by thirty years. - Nevertheless St. Alphonsus probably holds (n. 510) that these goods are prescribed by three years, provided that title is present.

(B) By civil law, the time required is diverse for various Nations; hence we shall treat of this in the Supplement.[3]

[3] For France, cf. Civil Code, a. 2260-2280; Planiol, n. 1402-1488; Supplement, p. 59*.

253. 4. Good faith, which can be twofold: theological and juridical.

(A) Theological good faith is a prudent judgment by which the possessor believes that the thing is his own, or at least is possessed justly by him.

(a) Now prudent judgment is lacking when it does not rest on a grave foundation, e.g., when someone has gravely neglected to investigate the thing diligently. But invincible ignorance, whether of fact or of law, does not harm good faith.

Good faith is also lacking as soon as the possessor notices that he possesses another's thing; or also, if, seriously doubting concerning his own right, he nevertheless invades a thing possessed by another. But if doubt supervenes upon possession already begun in good faith, and, after the matter has been diligently investigated, remains, he can retain the thing, according to that saying: in doubt the condition of the possessor is better; for although he is not morally certain that the thing is his, nevertheless he possesses it legitimately.

254. Here, however, the question arises whether a possessor in good faith legitimately prescribes, who succeeds a predecessor in bad faith. A distinction must be made: if he immediately succeeds a predecessor whose bad faith is certainly established, as a universal heir or by universal title (below, n. 702), he does not legitimately prescribe: for since he juridically represents the person of the deceased, he takes upon himself his obligations, and therefore is bound to restore to the owner that which the predecessor possessed in bad faith. Nevertheless if he knows the bad faith of the predecessor only after the time required for thirty-year prescription has elapsed, he licitly retains the thing, provided that the title of the predecessor was not defective or not properly translative of property. - But a mediate heir, probably at least, and all the more a particular successor, legitimately prescribe, because juridically they do not put on the person of the predecessor, and therefore they can continue prescription begun in good faith.

255. (b) That theological good faith is necessary during the whole time of prescription, so that this may have force in conscience, is certainly established: - 1) by authority; since Alexander III says:[1] "It must be guarded with vigilant care ... lest we be possessors in bad faith in the estates of others ... because no ancient possession of days by divine right helps any possessor in bad faith, unless he repents after he has known that he possesses another's things, since by right he cannot even be called a possessor in good faith." The Code teaches the same thing more openly, can. 1512: "No prescription is valid, unless it rests on good faith, not only at the beginning of possession, but during the whole time of possession required for prescription."

[1] Ibid., c. 5, p. 383, ed. cited.

2. By reason; for as soon as someone is conscious that the thing possessed by him is another's and is not possessed justly, before the time required for prescription has elapsed, he is bound to restore it morally as soon as possible to the owner; otherwise he becomes an unjust detainer of another's thing and injures justice; for the thing cries out to its owner. - Therefore if certain civil laws in certain cases do not require good faith, they do not wish to touch the forum of conscience in this respect;[1] or, if they wished to, they lack force, as being opposed to natural and divine right; for natural right demands that fraud and bad faith patronize no one; otherwise thieves would be incited to invade the things of others, and the whole social order would be disturbed.

[1] This is established for the French Civil Code from the declarations of those who proposed the law; thus Bigot-Preameneu, *Expose des motifs*, after vindicating the utility and necessity of prescription, adds: "But this sacrifice, required for the public good, only renders more culpable in the internal forum him who, having usurped, or him who, being certain that his engagement has not been fulfilled, abuses legal prescription. The cry of his conscience is the only recourse which the law can leave to the owner or creditor who has allowed prescription to run against him."

256. (B) Juridical good faith is that which civil laws require; and since prescription obtains its force not only from natural right, but also from civil law, juridical good faith is required for prescribing validly and licitly whenever it is demanded by a just law.

By French law, good faith consists in this: that the possessor thinks that he from whom he received the thing, by force of a title translative of property, truly is the owner of this thing. This is presumed, unless the contrary is proved, and it suffices that it exist from the beginning of possession.[2] It is not required in prescription of thirty years, but in prescription of ten or twenty years or a shorter one.[3]

[2] Planiol, n. 1431-1434; Civil Code, art. 550 and 2269; Supplement, 59*.

[3] Civil Code, art. 2262, 2265, 2266, 2275; Planiol, n. 1431-1434; Supplement, 59*.

257. 5. Title, that is, the cause, or reason on account of which the possessor thinks the thing is his own; e.g., purchase, donation are titles from which the buyer or donee judge themselves to be owners of the thing bought or donated.

(A) Title is true when it validly transfers dominion; apparent, when, on account of some defect, it does not transfer dominion, but is judged to transfer it; defective, when by its nature it is not translative of property, e.g., leasing, deposit.

(B) That true title is not required here is clear from the fact that otherwise prescription would avail nothing. - Defective title certainly harms prescription, since from it it is established that the possessor is not the owner.[4]

[4] Hence the axiom: "It is better not to have title than to have a defective one"; for sometimes without title someone can prescribe, but by no means with a defective title.

(C) Apparent title can be: (a) colored, when it has the appearance of a true title, even if, on account of a hidden defect, it is invalid; e.g., the purchase of a stolen thing; (b) putative, or supposed, when someone prudently believes himself to be the owner, although in reality he is not the owner; thus one who possesses something by force of a testament revoked by another; (c) presumed, which in reality does not exist, but, on account of long possession, is supposed by law to exist.

258. These things being posited, by natural right a colored or putative title suffices for prescription, because good faith can exist with each; indeed, with positive right at least added, a presumed title suffices for prescription of the longest time, because lengthy possession is deservedly presumed not to be without title; unless, however, the adversary can prove that in the case a title was never present: for presumption yields to truth.

But civil law concerning title is not the same among various Nations.[1]

[1] French Civil Code, a. 2236-2241; 2262, 2263, 2265, 2267, 2279; Planiol, n. 1422-1430; Supplement, p. 57* sq.

III. On Liberative Prescription.

259. Notion. 1. From the disposition of civil law, which however is diverse with regard to various Nations,[2] a debtor can be freed from his obligations through a certain lapse of time. For this there is not required possession properly so called, which in a matter of this kind becomes impossible, but the non-exercise of the creditor's right suffices. Nor is title required, but rather the creditor's counter-title is possessed. Good faith likewise is not required by civil law except negatively, insofar as an oath can be deferred to the debtor concerning payment made or not. It is necessary, however, that the obligation be prescriptible, that is, capable of extinction; hence one cannot prescribe against an obligation of natural or divine right.

[2] For France, Civil Code, a. 2262, 2271-2280. - We declare the sense of art. 2279: "In the matter of movables, possession is equivalent to title," in the Supplement, p. 61*.

With regard to the time required, prescription is of the longest or long time, when it is completed by thirty or ten years; of short time, when five or six years are required; of shortest time, when three or fewer years suffice.

260. 2. Its force in conscience. (A) Prescription of the longest or long time has force also in the forum of conscience. For here the arguments set forth above (n. 253) recur. For the legislator could and wished to assign this force to that prescription on account of the public good. The principal motives which demand this are reduced to these three: (a) after a long time, it is deservedly presumed that the debt has been paid: for creditors are not accustomed to wait so long; (b) it would be a grave burden for debtors to preserve proofs of payment beyond ten years, and to hand over a great sum of money which they

thought had already been paid; (c) it is expedient that the carelessness and negligence of creditors be punished, so that they may be rendered more vigilant.

261. (B) Prescription of the shortest time does not have force in conscience, because the laws declare this explicitly or implicitly; for they do not deny action to the creditor except insofar as it is presumed that payment has already been made; hence, if by oath[1] or in another way it is proved that this was not made, the debtor is compelled to pay the debts.

[1] "Nevertheless, those against whom these prescriptions are opposed can defer the oath to those who oppose them, on the question of knowing whether the thing has really been paid." (French Civil Code, a. 2275.)

262. (C) Concerning prescription of short time there is controversy. In our judgment, the matter depends on the mind of the legislator; for he could indeed assign this force to prescription of five or six years, on account of the motives mentioned above (n. 268); whether he wished this or not depends on the very tenor of the law.

Now in France the legislator has set forth his mind sufficiently clearly from the fact that he admitted no proof in favor of the creditor, while on the contrary he permitted the oath to be deferred to the debtor in the case of prescription of the shortest time; for from this it is very probably inferred that he wished prescription of short time to have force in conscience. Hence in practice he who in good faith used this privilege of the law is not to be compelled to restitution.

263. 3. On the good faith required in this prescription. (A) Generally theological good faith is required in order to free oneself in conscience; for if someone is conscious that the debt has not been paid, by that very fact he acknowledges that the thing which he possesses is another's, and that he must restore it morally as soon as possible: otherwise he becomes an unjust detainer of another's thing.

(B) Nevertheless there are certain exceptions, which are easily understood from the very nature of the matter: (a) when someone prescribes against a servitude, he is not bound to warn another concerning the right of servitude which will soon be extinguished; but, although he is conscious of another's right, he can wait until that right is extinguished.

(b) Likewise if something is owed from a penal sentence, on account of a merely juridical fault, the debtor strictly speaking can wait until the fine or compensation is demanded by the other.

But in these or similar cases, properly speaking, good faith is not lacking; but he who is conscious of a debt, or of another's right, bears himself passively.

And let these things suffice concerning the modes of acquiring dominion and the existence of right.

Part I — Chapter II: On Injury, or the Violation of Right

On Injury, or On the Lesion of Right.

264. Notion and species. Although right cannot be violated licitly, in fact it is often injured, and the act by which another's right is violated is deservedly called injury (*in-jus*, that is, a negation of right). Among jurists, and many others, injury is frequently taken in a restrictive sense for an unjust lesion of honor; but here we use the word in a broader sense, to signify any lesion whatever of strict right.

Injury is properly distinguished from injustice as act from habit: the former, namely, is the act by which the strict right of another is violated; but the latter is the habit of eliciting such acts. Sometimes, however, in a broad sense these two words are taken indiscriminately.

By reason of morality, injury is formal, or imputable, when someone knowingly and willingly injures the right of another; material, when another's right is violated involuntarily, e.g., from ignorance or a fortuitous case.

265. Division of the chapter. There are as many kinds of injuries as there are diverse goods which can be violated. Now the goods possessed by men are of three kinds: goods of the body, goods of the soul, and goods of fortune; therefore a threefold kind of injuries can be distinguished; but before we discuss the individual kinds, a few things concerning injury and crime in general must be premised.

I. Preliminary Remarks.	**On the causes and remedies of crimes.**
	General principles concerning injury.
II. On injuries concerning goods of the body.	On suicide.
	On homicide.
	On duel.
	On war.
III. On injuries concerning goods of the soul.	On rash judgment, or on lesion of reputation.
	On detraction.
	On contumely, or on lesion of honor.
	On lying, or on lesion of truth.
	On violation of a secret.
IV. On injuries concerning goods of fortune.	The nature of theft and its gravity.
	Causes excusing from the occupation of another's thing.

Art. I. Preliminary Remarks Concerning Crime or Injury in General.

Since the Catholic priest ought to judge not only of the licit and illicit, but also to know the causes and remedies of crimes, so that he may restrain injustice more efficaciously, we shall speak: 1. of the causes and remedies of crimes; 2. of the general principles concerning injury.

§ I. On the Causes and Remedies of Crimes.

266. The Lombrosian School, so named from its leader Cesare Lombroso,[1] contends that the internal causes of crimes are certain natural anatomical, physiological, and mental defects, - to which are added external sociological causes, or causes arising from the very state of society; from which it is inferred that crimes are not imputable to man, since he lacks liberty; nor therefore are they properly to be punished, but only to be prevented in the best way possible, for protecting social order. A theory of this kind is deduced from the system of evolution; for since, they say, man descends from the brute, it is no wonder that there are certain men who, on account of the law of atavism, approach more nearly to brutes and imitate their depraved instincts; in fact those guilty of grave crimes display anatomical, physiological, and psychological characteristics by which they seem to be similar to brutes and to primitive barbarian men, and form a special type which they call the criminal type;[1] they are also impelled to crime by the law of heredity and by many social causes.

[1] Lombroso, born at Venice, 1836: *Le Genie et la Folie*, 1864; *L'Homme criminel*, 1875; *La femme criminelle*, 1896; *L'Homme delinquant*, 1897; *L'Anthropologie criminelle*, 1890; *Nouvelles recherches de Psychiatrie*, 1892; *Les Applications de l'Anthropologie criminelle*, 1892, etc. - Among his disciples are numbered in Italy: E. Ferri, *Nuovi orizzonti*; *L'omicidio*, Turin, 1890; *Criminal Sociology*, New York, 1896; *Les Criminels dans l'Art et la Litterature*, 1897; Garofalo, *La Criminologie*, 2nd ed., Paris, 1890; in France: Dr. Letourneau, Preface to *L'Homme Criminel*; Dr. Fere, *Degenerescence et Criminalite*, Paris, 1888; in England: Thompson; Maudsley, *Physiology and Pathology of the Mind*, 1867; *Responsibility in mental disease*, 1874; in Austria: Benedikt; and in a general way positivists and materialists; nevertheless not all explain these theories in the same way.

[1] Let us bring forward certain examples, which Tarde gathers from Lombrosian works, *La Criminalite comparee*, 5th ed., Paris, 1902, p. 11 sq.: "Anatomically, the criminal is in general tall and heavy. I do not say strong, for on the contrary he is weak in muscles. By his average stature and weight, he surpasses the average of honorable people; and this superiority is more remarked in the assassin than in the thief... Malefactors have a receding, narrow, and wrinkled forehead, prominent eyebrow arches, very large ocular cavities, like those of birds of prey, advanced and very strong jaws, ears standing out and large, like a handle: these are very clear traits of savagery. Add to these diverse anomalies which it would take too long to enumerate, and in particular the defect of cranial or facial symmetry..."

It is not our purpose here to prove man's free will, concerning which there is treatment in the Philosophical Institutions; but by saying a few things concerning the causes of crimes, we shall briefly set forth what of truth and what of falsity is found in the theories of today's Criminalists.[2]

[2] For understanding this better, see Treatise on Human Acts, n. 87-136.

1. On the Causes Impelling to Crime.

267. 1. What concerning anatomical causes? Among the various anatomical defects with which, according to Lombroso, criminal men are endowed, there can be certain ones which so deform the brain that they diminish or impede the exercise of the intellectual faculties, and therefore of conscience, and so lessen or entirely remove free will; those who labor under such a defect are called semi-fools or insane, and when they commit crimes under

the influence of innate propensities, they are guilty either little or in no way, according to the degree of liberty which remains in them. - We likewise confess that from certain lineaments of the face or body, or from other external signs, there can sometimes be conjectured the existence of depraved proclivities, which, whether innate or acquired, incline the will more or less to vicious acts; and therefore a wise judge, not only in the forum of conscience, but also in the external forum, can use all these things for judging concerning the gravity of crimes. - But from this it by no means follows that always and everywhere all crimes are to be excused from every moral fault, because they were committed by those who, on account of anatomical deformities, are judged to lack moral sense.

268. In fact: (a) The anthropological Congress held at Paris in the year 1889 declared that from the anatomical investigations thus far carried out it is by no means established that there is even one character which belongs exclusively to criminal men, and therefore that jurists and judges can deduce nothing certain from anatomical deformities with regard to the imputability of crimes.[1] (b) Judges who for many years have carried out accurate investigations concerning crimes do not hesitate to assert that there is no physical sign by which guilty men can be distinguished from honorable men; for the various signs alleged by Lombroso and his disciples are for the most part common to guilty and innocent persons;[2] indeed the supporters of this school plainly admit that these signs, although they are more frequently found in guilty persons, are not rarely also found in good persons.[3]

[1] Thus Benedikt, who previously had favored the Lombrosian theories more than was fair, declared in the Paris Congress: "All these craniometric methods indicate more dilettantism than scientific rigor... the jurists are quite right to distrust the gifts which the anthropologists make to them." (*Archives d'anthrop. criminelle*, 1889, p. 555.) Manouvrier, Topinard, Brouardel said the same openly, in L. Proal, *Le crime et la peine*, 3rd ed., Paris, 1899, p. 82-83; cf. Tarde, *La Philosophie penale*, 3rd ed., Paris, 1892, p. 218-236.

[2] Thus, among others, L. Proal, op. cit., p. 82: "There are no physical characteristics distinguishing the malefactor from the honorable man. Brought into contact by my profession with criminals, I believe that assassins are just as much dolichocephalic as brachycephalic... The face of the accused does not appear to me more asymmetrical than that of honorable people; the nose of thieves resembles that of swindlers; the teeth, ears, and hands of the accused present no exceptional peculiarities. My judicial experience no more permits me to admit the existence of a criminal type effacing the national type."

[3] Lombroso, *L'Anthropologie criminelle*, Preface and passim, e.g., p. 40-56. Thus also Garofalo, op. cit., p. 71, after reporting signs of this kind, writes: "None of these characters is constant, but according to comparison with non-delinquents, their frequency is much greater in the criminal world."

269. 2. What concerning psychological causes, and especially insanity? Since merely anatomical causes are unequal to explaining crime, the Lombrosian school, adhering to the footsteps of Dr. Despine, contends that criminal men labor under a certain congenital weakness of mind, which is akin to insanity, and imports the lack of moral sense; a sign of this thing is that many of them are troubled by the epileptic disease, which often remains hidden, or, as they say, masked. This it tries to prove from the fact that guilty persons generally (a) show no signs of shame, blushing, contrition for past crimes, or firm purpose with regard to future things; (b) easily commit the same crimes again; (c) neither do they hesitate in doubt, but they commit crime at once, and indeed without

any mercy toward the innocent whom they kill; (d) moreover they act imprudently and improvidently, and therefore are easily captured.

270. We indeed confess that there are certain persons who labor under insanity, and therefore are immune from moral fault while they commit crimes. But from public documents it is established that very few are impelled to crime by insanity or by the epileptic disease.[1]

[1] "Out of 5,432 prisoners, Bruce Thompson (disciple of Lombroso in England) found only 57 epileptics. According to the penitentiary statistics published by the Ministry of the Interior in 1882, out of 8,071 young detainees of both sexes, 10 cases of epilepsy were established among boys and 6 among girls; out of 13,392 detained men and 2,290 detained women on December 31, 1881, at the end of that year there were reported 27 men and 1 woman, not insane, but having had attacks of epilepsy. During the year 1882, this affection is noted in 16 men and 7 women. M. Lombroso himself acknowledges that out of 100 Italian prisoners there are only 5 epileptics." (L. Proal, op. cit., p. 85.)

271. Moreover the arguments brought forward above prove nothing; for (a) if certain persons among the guilty show no signs of contrition, there are not a few who sincerely grieve for crimes committed, and not only live honorably, but even splendidly, sometimes performing heroic acts directly contrary to the vicious acts which they had previously committed, as is established from the testimony of those who care for the amendment of the guilty.[2]

[2] See their testimonies in Proal, op. cit., p. 110.

(b) Nor is it any wonder that those who have often committed some crimes relapse more easily into the same ones, since by repeated acts a habit is formed and propensity toward evil is increased; but from this it by no means follows that acts of this kind are not free or imputable; it is indeed more difficult in this case to resist depraved propensities, but not impossible: habit is conquered by habit.

272. (c) It sometimes happens that crimes are committed at once, with violent passion impelling to this: and under this head liberty and imputability can be diminished. But generally more grave offenses are committed only gradually, after lesser ones have already been admitted several times, as is established from both public and private documents;[1] from this it happens that greater penalties are inflicted on repeat offenders, and judges who inquire into crimes generally discover that not a few offenses of the same kind were committed by the guilty. - It is likewise true that by most guilty persons no pity is shown at the very time when the crime is carried out; but often, after the crime has been committed, the most criminal men are so moved by mercy that they shed tears,[2] if however cases are excepted in which homicide was deliberately committed from hatred or revenge: for passions of this kind greatly darken the mind and moral sense, unless from the beginning they are strenuously attacked and conquered.

[1] Proal, op. cit., p. 117-118.

[2] Ibid., p. 120.

(d) Nor do guilty persons generally act imprudently; for from public documents it is established that many of them remain unknown, because they skillfully hide themselves from magistrates.[3] Hence if a few show themselves improvident in certain circumstances, it is not logically inferred from this that all and permanently labor under infirmity of mind.

[3] "For greater precision, I am going to borrow some examples from the criminal statistics of 1880. From 1875 to 1880, there were on average per year 34,501 individuals judged for thefts; but the authors of 38,682 thefts remained unknown and the presumed authors of 2,720 other thefts were dismissed from prosecution for insufficient charges. More than six tenths of thieves remained unpunished. In the same period, there were 197 individuals judged for assassination, but the authors of 72 assassinations remained unknown, and 77 were dismissed from prosecution for insufficient charges." (Proal, op. cit., p. 115-116.)

273. 3. What concerning the law of heredity? That certain physical diseases and defects are transmitted by heredity from parents to children is known to all; in the same way, although neither so universally nor so efficaciously, it is commonly held that certain aptitudes of mind pass into descendants, on account of the connection which is acknowledged to exist between dispositions of the body and faculties of the mind. With regard to moral propensities, we also confess that these are sometimes poured from parents into children, especially those which are more intimately connected with the constitution of the body and blood, such as inclinations to drunkenness, vices of the flesh, anger, etc. Hence in most regions examples are alleged of families in which certain vices seem to have been transmitted through many generations.[1] Besides, congenital propensities of this kind are greatly increased by education, as long as children remain under the power and influence of parents. Therefore, whenever judgment is made concerning the gravity of crimes which have been committed by children whose parents had been addicted to vices, they are surely to be dealt with more mildly.

[1] You will find not a few examples of this kind in P. Aubry, *La Contagion du meurtre*, 2nd ed., Paris, 1894, p. 17-51; R. L. Dugdale, *The Jukes*, New York, where, through five generations, the history of a certain American family is described, nearly all of whose members publicly indulged in vice.

274. Yet from this it is by no means established that they are immune from every moral fault. For by heredity and education depraved inclinations are much increased, but they are not irresistible, nor do they utterly extinguish liberty. For experience establishes that not a few, born from vicious parents, cultivated distinguished virtues, and on the contrary that many, born from honorable parents, fell into the mire of vices. Even in these families which seem to be as if immersed in vice, not a few members are found who cultivated virtue.[2]

[2] Cf. Aubry, op. cit., pp. 42, 48, 50.

275. 4. What concerning social causes? It cannot be doubted that crimes are promoted or on the contrary restrained by the laws and institutes of society. Let us bring forward certain examples:

(A) Whenever religion is fostered, by that very fact crimes are diminished and prevented, since many are deterred from vice by fear of eternal punishments, and are drawn to virtue by hope of eternal beatitude; on the contrary, when religion is altogether omitted in the education of boys or in public institutes, many more offenses are committed, according to experience as witness, and as the adversaries themselves confess.[3]

[3] Thus in France, from the year 1880, the offenses and crimes of youths and adolescents were greatly multiplied. For these things are read in the report to the President of the Republic for the year 1894: "Number of minors accused of offenses of common law: males from 16 to 21 years: 1880: 22,267; 1890: 25,416; 1894: 28,701." (*Annuaire d'Economie*

Politique, by M. Block, 1897, p. 212.) That this must be attributed to the neutral school is confessed by men by no means religious, such as J. Bonzon, *Le Crime et l'Ecole*, Paris, 1896; Fouillee, *Les Jeunes Criminels*, in *Revue des Deux-Mondes*, Jan. 15, 1897, p. 417-449.

(B) Likewise laws or customs favoring drunkenness more or less by that very fact promote crimes; for, as experience testifies, many things are committed under the influence of alcoholism.[1]

[1] E. Masoin, *L'alcool et le crime*, in *Revue neo-scolastique*, Nov. 1901, p. 362-369, where these things, among others, are gathered from public documents, p. 363: "Of the whole number of criminals, 11 percent were in a state of drunkenness at the moment of the deed; for those condemned to death, it rises to 43 percent. - Of the whole number of criminals, 44 percent were notorious drunkards; for those condemned to forced labor the figure of 44 percent rises to 54 percent and for those condemned to death it reaches 60 percent." - Cf. Treatise on Sins, n. 550-555.

276. (C) No less dangerous is the immoderate license of writing all things or of exhibiting in theaters even obscene things and those things which incite readers or hearers to crimes of diverse kinds; for many guilty persons openly declared that they had been impelled by all these things to commit crimes about which they had not previously thought.[2]

[2] Fouillee, *Les Jeunes Criminels*, l.c., p. 436-443; Proal, op. cit., p. 187 sq.

(D) Finally the manner of acting with guilty persons who are thrust into prisons often contributes most greatly to the propagation of crime; for those who committed an offense only accidentally, when an occasion was given, indeed also those who are accused of crime, generally cohabit with those who have frequently committed crimes; from which it happens that they hear many things by which they are impelled to vice and crimes, so that not a few leave prison worse than before; hence the number of repeat offenders grows day by day.[3]

[3] Aubry, *La Contagion du Meurtre*, p. 55-67; H. Joly, *Le Combat contre le Crime*, Paris, 2nd ed., s.d., p. 182-261.

277. Conclusion. Therefore the causes impelling to crime are multiple; nor surely are the primary ones to be omitted, namely depraved propensities and passions,[4] which are in all more or less, and are rooted more deeply in the soul through vicious habits, education, and other external causes. Among these are eminent: -

[4] Concerning these there is fuller treatment in the Treatise on Sins and Vices, n. 510-567.

(A) Cupidity, or the sacred hunger for gold, that is, the inordinate propensity for acquiring riches by all means, even illegitimate ones, as quickly as possible; for this directly incites to theft, but indirectly to homicide, whenever this is apprehended as a useful means for becoming rich. Hence deservedly the Apostle:[1] "For they who wish to become rich fall into temptation, and into the snare of the devil, and into many useless and harmful desires, which plunge men into destruction and perdition. For cupidity is the root of all evils."

[1] I Tim., VI, 9-10.

278. (B) Pleasure, or the inordinate love of carnal delights, intemperance and lust, to which men cannot indulge unless they have money; hence, when their own resources have now been dissipated, nothing remains except to steal; besides, those who indulge in wine and women not rarely fall into quarrels and contentions, and so are impelled to greater crimes, as mournful experience establishes.[2] The Wise Man had already said this:[3] "A drunken workman will not

become rich... Wine and women make wise men apostatize, and they will rebuke the sensible: and he who joins himself to fornicators will be wicked: rottenness and worms will inherit him... and he will be taken away from the number of his soul."

[2] You have examples in Proal, op. cit., p. 254-263; H. Joly, *La Criminalite de la Jeunesse*; M. De Morrison, *Juvenile offenders*, New York, 1897, p. 69 sq.; Proal, *Le Crime et le Suicide passionnels*, Paris, 1900.

[3] Eccli., XIX, 1.

279. Pride, or the inordinate love of one's own excellence, which is accompanied by an excessive appetite for honors and vainglory, and which is followed by envy, hatred, and the desire of revenge. For from these often arise thefts, by which riches desired for vain display may be more easily acquired; contentions, quarrels, homicides, by which those who are hated or excite envy may be more efficaciously removed.[4] - This indeed can be illustrated from many texts of Scripture: "Pride is hateful before God and men: and all iniquity of nations is execrable... since the beginning of all sin is pride."[5] - "Not as Cain, who was of the evil one, and slew his brother. And why did he kill him? Because his works were evil, but those of his brother were just... Everyone who hates his brother is a murderer."[1] - "Whence are wars and contentions among you? Is it not from this? From your concupiscences, which war in your members... You kill and envy."[2]

[4] Proal, op. cit., p. 245-251; 257-258; 260-262.

[5] Eccli., X, 7, 15.

[1] I John III, 12, 15.

[2] James IV, 1-2.

Hence criminal men, if you except the insane who are impelled to crime by a certain blind instinct, are not born such, but become such by their own weakness or malice, yet often under the influence of external causes.

II. On the Means by Which Crimes Can Be Prevented or at Least Diminished.

280. Means of this kind cannot be efficacious unless they meet the causes of crimes. Now concerning anatomical defects, insanity, or weakness of mind, nothing special occurs to be said, since these concern physicians rather than priests. The laws of heredity likewise cannot be changed; but depraved propensities transmitted by heredity, or strengthened by habits, can in some way be corrected by Christian education and manly effort. But social causes can be changed for the better by new laws and by private associations of citizens.

281. 1. First of all Christian education is required, by which depraved inclinations can be moderated and tamed. And indeed, when a family is endowed with honesty and religion, nowhere can a better education be found than in the paternal home. But where parents are vicious and irreligious, an effort must be made so that, with license obtained from the parents or from civil authority, the children may be handed over to another family, in which they can be instructed in a Christian manner. If both are lacking, let them be

committed to one of the Catholic orphanages which today have been erected in almost every place.[3]

[3] Concerning various institutes of this kind see *Paris charitable et prevoyant*, Paris, 1897, p. 28-260; *La France charitable et prevoyante*; Maxime du Camp, *Paris bienfaisant*, Paris, 1888, p. 161-201 and 392-425; P. Delay, *Les OEuvres de preservation et de rehabilitation*, in *Correspondant*, Nov. 25, 1903, p. 723-753.

This education ought to tend to this, that depraved inclinations, as soon as they are manifested, may be restrained and rooted out, e.g., propensity to small thefts, cruelty even toward brutes, etc. Likewise the notion of the duty to be fulfilled should often be inculcated, by which the innate tendency toward pleasure may be lessened; the faculties of the soul, especially reason and will, should be directed perpetually to the good; but chiefly the love of God and neighbor on account of God should frequently be presented as the supreme duty.[1]

[1] Among others, Dupanloup discusses education excellently, *De l'Education*, 7th ed., Paris, 1886, especially t. I, p. 1-176; t. II, p. 108-484; t. III, p. 367-498; *Lettres sur l'Education des Filles*, Paris, 1879.

282. 2. Yet education profits little unless youths are gradually taught to fly with their own wings, or to act by their own powers. For since the life of man upon earth is warfare, and our wrestling is especially against the passions inclining the will to evil, it is necessary that each one, relying on the help of God, be able by his own effort to fight strenuously and constantly against depraved inclinations; for this two things especially are desired: a firm persuasion of mind concerning duty to be placed before all things, - and an unconquered strength of will for overcoming obstacles. But the passions are not to be utterly rooted out, since they add strength to the soul, but are to be directed to the good and honorable; thus the covetous should desire the treasures of heavenly grace and glory; the ambitious should turn their powers to promoting the kingdom of God; and so concerning the others, as is set forth more fully in the Treatise on Virtues.

283. 3. Social causes which impel to crime must be removed with all strength, insofar as this can be done.

(A) Impiety and irreligion must be restrained by providing more efficaciously for the Christian education of youths, by instituting Catholic schools, by setting forth the doctrine of Christ more frequently, by creating associations and confraternities, by using laymen as auxiliary apostles for propagating religion, etc.

(B) Intemperance, which casts so many men into vices, must be attacked by the various means which are proposed by societies favoring temperance,[2] by vividly describing the depraved consequences of drunkenness, and by procuring honorable recreations for youths, by which they may be kept away from taverns and drinking houses; and by favoring laws which restrict the number of taverns.

[2] For several years now societies of this kind have been instituted in Ireland, England, and the United States of America, and they have served not a little for restraining drunkenness. Recently in France certain ones have likewise been founded, and in these days (Oct. 1903) a Congress was held at Paris for promoting temperance in various ways; concerning which see the periodical *La Temperance*, Nov.-Dec. 1903. - Cf. Mgr. Turinaz, *Le clerge catholique et la lutte contre l'alcoolisme*, Paris, 1901; Riemain, *Plan de campagne contre l'alcoolisme*, Paris, 1901; *La Science Sociale*, Oct. and Nov. 1903, p. 334-335; Oudaille, *Le Foyer familial et la femme contre l'alcoolisme*, Paris, 1904; Cheysson and Riemain, *Premier Congres national contre l'alcoolisme*, Paris, 1904; Bertillon, *L'alcoolisme et les moyens de le combattre*, Paris, 1904.

284. (C) With regard to books, newspapers, spectacles, and other things of this kind which corrupt morals and prepare the way for many crimes, nothing is more efficacious for warding off these dangers than to spread good books and newspapers, - to offer honorable recreations especially to the younger, - to institute Catholic associations, in which all those who sincerely wish to cultivate religion and virtue will be able to be gathered together. Nor nevertheless should legal means be omitted by which scandalous exhibitions can be impeded.

(D) Nor must one altogether despair of those who are thrust into prisons: (a) all those who strive to reform their morals must be aided with all strength, whether by proposing wiser laws concerning the manner of acting with the guilty, or by visiting those detained in prison and instructing and educating them;[1] (b) when the guilty are freed from prison and are prepared to begin a new life, work should be procured for them, insofar as this can be done, so that they may be able to live honorably; for experience establishes that not a few relapse because they have not found the means of living honorably.[2]

[1] Concerning this see H. Joly, *A la recherche de l'Education correctionnelle*, Paris, 1902; *Le Combat contre le crime*, ch. V-VIII.

[2] Joly, *Le Combat contre le crime*, ch. IX-X.

By these and other means, which, when opportunity is given, will occur to the mind, the number of crimes will be able to be diminished, and not a few of those who have committed crime from human frailty will return themselves to better fruit.

§ II. General Principles Concerning Injury.

Before we discuss the individual species of injuries, it will not be beside the matter to set forth certain principles which are common to all: 1. concerning the gravity of injury; 2. concerning the axiom: injury is not done to one knowing and willing; 3. concerning the other axiom: injury is not done when the owner is irrationally unwilling; 4. concerning the influence of intention on the injustice of an external act.

285. 1. On the gravity of injury. Injury is a grave sin from its kind, insofar as it violates a right which of itself is of grave moment; but it can be venial both from imperfection of the voluntary act and from smallness of matter.

But in order to judge whether an injury is grave or not, attention must be paid to two things: (a) to individual men whose rights are injured, namely whether a grave hurt or damage is inflicted upon them, whether material or spiritual, by disturbing their liberty, security, or peace; for, as St. Thomas rightly says,[1] "sins which are committed against one's neighbor are to be weighed in themselves according to the harms which are inflicted upon the neighbor, because from this they have the character of fault"; (b) to society itself, namely to the damage which is inflicted upon the public good, or which would be inflicted if such an injury were committed with impunity; for since the common good, other things being equal, prevails over the private good, he sins mortally who, although he has inflicted only slight damage upon some private person, gravely harms the commonwealth, or would harm it on the supposition that his action were not prohibited under grave sin. Thus he who steals one hundred coins from a rich man perhaps brings him only slight harm; nevertheless he sins mortally, because, on the supposition that such theft were not prohibited under grave sin, the order of society would soon be overthrown.

[1] St. Thomas, 2. 2., q. 73, a. 3.

286. 2. On the meaning of the axiom: To one knowing and consenting, injury and deceit are not done.[2] The meaning is that no injury is committed against him who knowingly and freely can and wills to renounce his right; for then he cannot complain of a violated right.

[2] Reg. 27 *de Reg. juris in 6°*, p. 1122, ed. Richter-Friedberg.

But, in order that the axiom may be true, it is necessary that the consent be:

(a) Fully free, that is, extorted neither by error nor by deceit or fear; thus the traveler who, through fear of death, hands money to a robber lacks due liberty, - as does the laborer who, compelled by necessity, accepts a wage less than what is owed from strict justice, - and the one who gives money to someone falsely asserting that he is his relative, when the only motive of the donation is the alleged kinship, etc.

(b) Valid, or truly given by him who can lawfully renounce his own right. Now he who patiently tolerates or condones an injury is not by that very fact judged to yield his right; nor even he who, for the sake of humility, desires reproaches; but an act is required by which one properly abdicates his rights; and, although consent can sometimes be presumed, if it rests upon valid reasons, it ought not easily to be presumed.

On the other hand, the consent of one who consents to be killed in a duel is not valid, - nor that of a husband who permits another to use his wife, - nor that of a cleric who renounces the privilege of the canon; for the rights in question can be renounced neither licitly nor validly.

Moreover, in order that the one injuring may be immune from the sin of injustice, it is required that he know that this abdication of right has in fact been made validly; otherwise subjectively he will be guilty of injustice.

287. 3. On the meaning of the axiom: Injury is not done when the owner is irrationally unwilling. When from strict justice the owner is bound not to be unwilling to the occupation of his thing, no injury is done to him, even if he opposes this occupation; e.g., a poor man placed in extreme necessity can take bread necessary for sustenance, even against the owner's will; for in this case the owner from strict justice is bound to permit the hungry man to take what is necessary for saving his life, unless he himself is in the same necessity; hence he does not have a right to retain his thing; nor consequently is injury done to him.

288. 4. On the influence of intention in the injustice of an external act. Since two things are required for injury, namely an action or omission injurious to another's right and the mind or intention of harming, the question arises whether the agent's intention influences the injustice of the act, so that from the internal act the external act can become unjust.

Now especially a threefold hypothesis can be conceived:

(A) When the external act is of itself indifferent, the agent's intention can render it unjust, because it can bring it about that this act is harmful to another or not; thus he who buys a stolen thing with the intention of returning it to its owner does nothing unjust; but if with the mind of retaining the same thing, he commits an injury.

(B) But when the external act is of itself just and licit, a depraved intention of harming does not render it unjust; such is the case of a judge who justly, from proofs, condemns the guilty man to death, even if he does this from hatred; for then he does not violate the neighbor's right, since the latter has juridically been recognized as guilty; nevertheless he injures charity by the sin of hatred.

(C) When the external act is indeed illicit, but not unjust, the intention of harming does not render it unjust; e.g., he does not act unjustly who refuses to aid another who is in grave danger, since otherwise he is bound to this only from charity; for although he does this from the mind of harming, he does not injure the other's strict right.

Art. II. On Injuries Concerning the Goods of the Body.

Injuries of this kind are prohibited by the fifth precept of the Decalogue: "You shall not kill"; by which words, primarily indeed, the unjust killing of oneself or of one's neighbor is forbidden; but secondarily wounding, or mutilation, in one word, whatever unjustly injures either one's own body or another's body.[1] Therefore we shall speak:

[1] Concerning injury in the matter of chastity, namely concerning defloration and adultery, this is treated in the Treatise on Chastity.

1. of the killing of oneself, or suicide;
2. of the killing of one's neighbor, or homicide;
3. of the duel, which partakes of the nature of both;
4. of war, in which many homicides are perpetrated.

§ I. On Suicide.

289. Historical survey. (A) Among the Jews very few examples of suicide are found, both because that crime was prohibited by God, and because the Israelites desired to be long-lived upon the earth. The cases indeed are alleged of Samson,[3] Saul,[4] Achitophel,[5] Eleazar,[6] Razias;[7] but Samson and Eleazar did not properly commit suicide, but gave their life for their country, in order to rout enemies.

[2] St. Thomas, 2. 2., q. 64, a. 5; Lugo, disp. X, n. 1-55; Lessius, lib. I, cap. 9, dub. 6; Billuart, diss. X, art. 3; St. Alphonsus, n. 366-375; Carriere, n. 833-856; Ball. P., tr. VI, n. 855-875; Tissot, *De la manie du suicide*, Paris, 1841; Lisle, *Du suicide*, Paris, 1856; Morselli, *Il suicidio*, Milan, 1879; Legoyt, *Le suicide ancien et moderne*, Paris, 1881; Masaryk, *Der Selbstmord als sociale Massenerscheinung*, Vienna, 1881; Westcott, *Suicide, its history, litterature, etc.*, London, 1885; Bonomelli, *Il suicidio*, Milan, 1892; E. Durkheim, *Le Suicide, etude de sociologie*, Paris, 1897; P. Hauviller, *Du suicide, unite de son etiologie, son traitement*, Paris, 1899; L. Proal, *Le Crime et le suicide passionnels*, Paris, 1900; Gurnhill, *The Morals of suicide*, London, 1900.

[3] Jud., XVI, 22-30.

[4] I Reg., XXXI, 2-6.

[5] II Reg., XVII, 23.

[6] I Mach., VI, 43-46.

[7] II Mach., XIV, 37-46.

(B) Among the Greeks,[1] the chief philosophers, such as Socrates, Plato, and Aristotle, regarded self-killing as something cowardly; yet some killed themselves, whether on account of the public good, or to avoid disgrace or other private evils; such were Codrus the Athenian, Menoeceus the Theban, Cleomenes, king of Sparta, Themistocles, Isocrates. The Stoics advocated suicide as an act of virtue, by which they could at their pleasure be snatched from the bonds of life; and also the Epicureans, as a means of fleeing the bitternesses of life.

[1] Concerning the history of suicide among the Greeks and other Nations see Legoyt, op. cit., p. 7 sq.

(C) At Rome, as long as the citizens cultivated virtues and honorable and simple morals, suicide was almost unknown; especially the examples of Lucretia, Scipio of Utica, Cassius, and Brutus are cited. But as soon as wealth, luxury, and love of pleasures flourished, namely in the last times of the Republic and under the reign of the Emperors, many citizens, in order to avoid pains or a more cruel death, took away their own life.

290. (D) These morals the Christian religion corrected, by often inculcating human dignity, the value of life, patience in adversities, and trust in God. Hence, among Christians, suicides became exceedingly rare. There were indeed some who went to meet martyrdom, and also Christian virgins who, lest they lose virginity, did not hesitate to bring death upon themselves;[2] but the Fathers, especially St. Augustine,[3] while they praised their virtue and right intention, reproved the deed itself. Likewise certain heretics, akin to the Donatists and called Circumcellions, approved suicide; these "were accustomed to kill themselves by various deaths, especially by precipices and waters and fires, and to seduce into that madness others of either sex whom they could."[4] But for this reason they are severely censured by the Fathers.

[2] Thus St. Pelagia (in St. Ambrose, *de Virginibus*, III, 7), Domnica with her two daughters (Eusebius, *Eccles. Hist.*, VIII, 12, in Migne, P. G. XX, 770-771), Sophronia (Eusebius, op. cit., VIII, 14, Migne, l. c. 786-787).

[3] *De civit. Dei*, l. I, c. 26-27, in Migne, P. L. XLI, 39-40.

[4] St. Augustine, *De Haeresibus*, n. 69, in Migne, XLII, 43.

291. (E) But in more recent times, as faith decreased and pagan morals gradually were reborn, not a few writers again advocated suicide, among whom were Montaigne, Montesquieu, Rousseau, who, otherwise little consistent with himself, elsewhere reproved that crime, - d'Holbach, Barbieri, J. Robeck,[5] and generally the positivists and materialists. Therefore suicides became more frequent, especially in France and Germany.[6] Besides, in various regions many more are committed among Protestants than among Catholics, even according to non-Catholic writers as witnesses.[1]

[5] Concerning these see Legoyt, op. cit., p. 85-99.

[6] In France suicides are multiplied daily; - namely, in the year 1826 there were counted 1739; in 1851: 3639; in 1888: 8451; in 1897: 9156. If a comparison is made with other regions, already in the year 1888 France held the first place; for this was the proportion of suicides per 1,000,000 inhabitants: - in France: 212; in Prussia: 198; among the Belgians: 116; in Austria: 114; in England: 80; in Italy: 53. - In cities suicides are more frequent than among country people; thus

per 1,000,000 inhabitants there are had at Leipzig: 450; at Paris: 400; at Berlin: 300; at Vienna: 290. Cf. M. Block, *L'Europe politique et sociale*, Paris, 1892, p. 459, 460, 462. - As to the causes of suicide, these things are read in M. Block, op. cit., p. 461: "Relatively to the presumed motives of suicides, the General Account gives the following averages for the period 1876-80: poverty and reverses of fortune, 698; family sorrows, 842; love, jealousy, etc., 254; drunkenness, 799; desire to withdraw oneself from judicial proceedings, 236; physical sufferings, 202; cerebral maladies, 1901; others and unknown, 627."

[1] Durkheim, op. cit., p. 149-173; Hauviller, op. cit., p. 62-65.

292. Division of the matter. Suicide is sometimes directly intended as an end or a means: then it is called direct; but sometimes it is not intended in itself, but is foreseen as probably going to follow from the action which is placed; thus a soldier about to fight for his country foresees that death will probably follow from the battle; then suicide, if it really occurs, is indirect. Hence we shall speak: 1. of direct suicide; 2. of indirect suicide; 3. by way of corollary, of mutilation of oneself, surgical operations, and care of one's own body.

I. On Directly Intended Suicide.

293. 1. Principle: Suicide, directly and by one's own authority intended, is of itself a grave sin, injurious to God and harmful no less to the individual than to society.

It is said: by one's own authority... so that the case of one who would kill himself by divine inspiration may be excluded; - of itself, grave, because there can be some who in good faith, on account of various motives, take away their own life; but of itself the sin is mortal, on account of the motives which we now explain.

294. (A) It is a sin injurious to God;[2] for, from what has been said above (n. 34), perfect dominion over his own life does not belong to man, but only dependently upon God, its founder, supreme lord, and last end. Now, by taking away life from himself by his own hand, he violates God's rights: (a) since God, and indeed He alone, as supreme lord of all, has the right of disposing of human life, which He handed over to us after the manner of a deposit, and which we ought to use according to His will: for creatures essentially and according to their whole being depend upon the Creator; this indeed the Apostle intimates: "For none of us lives to himself, and no one dies to himself. For whether we live, we live to the Lord; or whether we die, we die to the Lord. Therefore whether we live or whether we die, we are the Lord's."[1] (b) Moreover God, insofar as He is the last end, has a strict right that we tend toward Him by the means which He has determined; now He has established according to His wisdom the term of our life and probation, and therefore we usurp His rights if by premature death of our own will we put an end to this probation.[2]

[2] This is the chief argument; the two others only confirm it.

[1] Rom., XIV, 7-8.

[2] Some pagans had already understood this; for Socrates (in Plato, *Phaed.*, c. 6) says: "This seems to me, O Cebes, to be said rightly, that God indeed has care of us; but we men are one certain thing among the possessions of the gods. Would you not therefore also be angry if one of your slaves killed himself, and, if you had power, would you not affect him with some punishment?"

Therefore deservedly St. Augustine writes that self-killing is prohibited by these words, You shall not kill: "It remains that we understand of man what was said, You shall not kill: neither another, therefore, nor yourself; for he who kills himself kills nothing other than a man."[3]

[3] *De Civ. Dei*, lib. I, c. 20, in Migne, P. L., XLI, 35; a little above, c. 17, p. 30-31, he had said: "For surely, if it is not licit by private power to kill a man, even a guilty one, whose killing no law permits, certainly also he who kills himself is a homicide; and he becomes so much the more guilty when he kills himself, the more innocent he was in that cause for which he thought he ought to be killed."

295. (B) Harmful to the individual himself; for he who spontaneously casts away life by that very fact takes from himself not only a present good, but every further abundance of good. (a) For life is the greatest good which we can enjoy in the present life;[4] for it is the condition without which we cannot enjoy other goods; as long as we live, we can acquire not only external goods, but also internal goods, namely knowledge, virtue, merits; but by voluntarily deserting life, we are deprived of all these things. (b) Moreover, as long as we preserve life unharmed, even if we are oppressed by various miseries and immersed in vices, hope remains that, circumstances having changed and morals having been reformed, things may proceed prosperously for us, and that we may redeem the faults of our past life by due satisfaction and by the practice of virtues; but if suicide is perpetrated, every hope vanishes, and nothing remains except that we pay the penalty proportioned to our faults. (c) It is a law implanted in our nature that we cultivate by manly effort the faculties received from God, physical, mental, and moral; the more perfect this development is, the greater is our happiness, since by the legitimate and progressive exercise of the faculties we approach more closely our last end; but, on the other hand, if life is cut off immaturely, man withers like a dried flower, before he has attained the degree of perfection destined for him.

[4] On the moment and value of life Olle-Laprune discusses excellently, *Le prix de la vie*, 3rd ed., Paris, 1896.

296. (C) Harmful to society. Every man is inserted into society as a useful member, and remains bound to it by certain bonds and duties, because he unceasingly receives many benefits from it: for he enjoys the protection of society, and by its aid he is able so to cultivate his faculties that their force is increased a hundredfold. Therefore he ought to pay the debts of charity and justice to the State; this indeed he can furnish by working, teaching, giving good example, and by other means by which the public good is promoted. Now, by departing from life by his own motion, the citizen despises all these duties, and gives scandal to those to whom he ought to have been of utility and edification. Deservedly, therefore, he is compared to a soldier who deserts the post where he ought to fight strenuously; deservedly he is held guilty of cowardice.

2. The Excuses Alleged by Advocates of Suicide Are Weighed.

297. (A) First of all there are alleged the infirmities and miseries of human life, such as poverty, disease, especially incurable disease, old age, bitter pains, weariness, griefs, and other things of this kind; and from this it is inferred that death is more desirable than a life overwhelmed by so many and so great miseries.

But in this a false concept of life is presented; for we are not here upon earth in order to enjoy pleasures, but in order to cultivate virtues by the legitimate exercise of the faculties, to increase

moral perfection, and to obtain a better life. Now nothing is more efficacious than tribulation for the practice of virtues; for virtue is perfected in infirmity, fortitude is strengthened in adversities,[1] patience is exercised by bearing pains bravely, merits are greatly increased; moreover, if we have sinned, an occasion offers itself for expiating faults by salutary penance. Thus the distresses of this life are rendered more tolerable; indeed they bring a certain joy, according to that word of the Apostle:[2] "And not only this, but we glory also in tribulations, knowing that tribulation works patience; and patience probation; and probation hope. And hope does not confound."

[1] Already Martial the poet had said: "In adverse things it is easy to despise life; he acts bravely who is able to be miserable."

[2] Rom., V, 3-5; cf. VIII, 18-39, where the same thing is set forth more fully.

298. (B) Others kill themselves because they cannot tolerate disgrace, since honor is life itself, and more precious.

A foolish excuse indeed! From the fact that others unjustly attack our reputation, must we punish ourselves by taking away life with a cruel hand? Nor indeed do we thus recover the good estimation of our neighbor; but, on the contrary, by living honestly and acting nobly we overcome false accusations. But if we have been guilty of some fault, reputation is recovered not by suicide, by which disgrace is increased, but by a praiseworthy life.

299. (C) Some, in order to preserve chastity, have gone to meet death, since virtue is much more precious than life.

And these indeed are subjectively worthy of excuse, on account of the right intention which they had, as St. Augustine notes; but, according to the same, this is not in itself a sufficient reason for committing suicide; for since purity is a virtue of the soul, it is not lost even when the body is oppressed, as the holy Doctor says:[3] "Wherefore a woman violently oppressed without any consent, and forced by another's sin, has nothing which she may punish in herself by voluntary death: much less before this happens; lest certain homicide be admitted, while the very crime, although another's, still remains uncertain." - In reality, material integrity of the flesh is not more precious than life, since sometimes it is licitly lost, in surgical operations, in order to save life. - But what if there is present a danger of inwardly consenting? Not even in this case is it licit to kill oneself; for in so great a danger grace will not be lacking for resisting lust, provided it is earnestly sought: "But God is faithful, who will not suffer you to be tempted above that which you are able, but will make also with temptation an outcome, that you may be able to bear it."[4] Therefore nothing remains except that one must fight strenuously; and what is said of this temptation must be said of others: it is licit for no one, in order to overcome any temptations whatever, to kill himself; for evils are not to be done that goods may come.

[3] *De Civit. Dei*, l. I, c. 18, in Migne, XLI, 31-32.

[4] I Cor., X, 13.

300. (D) Not a few contend that they lead a useless life, indeed one burdensome to others, or even harmful, insofar as they give scandal, so that by killing themselves they promote the good of their neighbor or of society.

But that these motives are not sufficient is already clear from what has been said. (a) If someone leads a useless life, nothing prevents him by praying, working, and helping others by works of charity from bringing many benefits both to himself and to others;[1] for this is the law of Providence: that, while we do good to others, we contribute most greatly to our own happiness. (b) But if we impose burdens upon others, because of disease, old age, etc., by that very fact we offer them an occasion of exercising patience and acquiring merits; on the other hand, by bravely tolerating our infirmities, we are unto edification for them: "Bear one another's burdens, and so you shall fulfill the law of Christ."[2] (c) But if we have harmed society or our neighbor, the duty lies upon us of repairing scandal by honesty and sanctity of life; by no means, however, do we have the right of taking away our life, since this rather gives new scandal.

[1] This J. J. Rousseau, who elsewhere favors suicide, explains eloquently: "Suicide is a furtive and shameful death; it is a theft committed against the human race. Before leaving it, give back to it what it has done for you. - But I am attached to nothing, I am useless to the world. - Philosopher of a day! do you not know that you could not take a step upon the earth without finding some duty to fulfill, and that every man is useful to humanity by the sole fact that he exists? Senseless youth! if there remains at the bottom of your heart the least sentiment of virtue, come, that I may teach you to love life. Each time that you are tempted to go out of it, say to yourself: 'let me do one more good action before dying,' then go seek some indigent person to aid, some unfortunate person to console, some oppressed person to defend." (*Nouvelle Heloise*, III, letter 22.)

[2] Galat. VI, 2.

301. A point to be noted for practice. Since some are led to suicide by a certain auto-suggestion, by the force of which, by frequently thinking about their own miseries, they gradually persuade themselves that there is no other means of extricating themselves from these difficulties except to perpetrate suicide, it is of the greatest moment to turn their mind away from this continual thought, by suggesting to them some work of charity, or another occupation by which they may more easily overcome weariness of life.

II. On Indirect Suicide.

302. 1. Principle: It is not licit to kill oneself indirectly, or to do or omit something from which death is foreseen as going to follow, unless from a proportionately grave cause.

This is clear from what was said in the Treatise on Human Acts, where voluntary indirect action was treated. For indirect suicide is nothing other than an act good of itself, or at least indifferent, from which death follows per accidens and beyond the intention; now an act of this kind is indeed not licit when there is no sufficient reason, because to posit the cause of some grave evil, without a sufficient motive, is something gravely sinful; but if a proportionate cause is present, it becomes licit; for the evil effect is not intended, but only permitted, and otherwise is compensated for by the good effect directly intended.

303. 2. What cause is proportionately grave? The general principle is that a greater cause is required the nearer and more certain the danger of death is. Let us run through the principal causes:

(A) The public good is a sufficient cause for someone to expose himself to a danger even proximate and certain of death; thus it is licit for soldiers to set fire to a ship, or to explode a fortress, in order

to submerge or destroy enemies, although their own death would certainly follow from this; but this of itself is not licit merely in order to avoid captivity, unless some hope shines forth of avoiding death. - The fulfillment of the duties of one's state can be referred to the public good; thus priests, physicians, and other men to whom by office the care of others belongs can, and sometimes ought, to expose themselves even to proximate danger of death, in order to procure the salvation, life, or security of others.

304. (B) A good of a superior order, even individual, such as the exercise of charity, faith, chastity, justice, and other Christian virtues, is a sufficient reason for going to meet even certain danger of death.

Thus, for the sake of charity, someone can expose himself to danger of death in order to save the life of parents, a spouse, a friend, a neighbor; e.g., in shipwreck it is licit to yield to another a plank already seized, although it is foreseen that death will follow from this. For the sake of faith, it is licit not only to bear death bravely, but also not to flee, even if an opportunity offers itself, - indeed to present oneself to judges, if this is judged necessary for strengthening others in the faith. For protecting chastity, a virgin upon whom violence is inflicted can flee, and in fleeing can cast herself headlong from a high cliff or from a window, even if death can follow from this, yet not altogether certainly, because not death itself, but the keeping of virginity, is intended.

From love of justice, evildoers can offer themselves to judges to be condemned and killed; indeed, when someone has been found guilty of death, more probably he can, at the judge's command, take poison with his own hands (as is narrated of Socrates), because then he does nothing other than execute a just sentence; yet not a few contradict this, because it is repugnant to equity that the guilty man be compelled to kill himself.

305. (C) In order to avoid a more certain danger of death, or a more cruel kind of death, it is licit to expose oneself to a morally certain danger to life; thus it is licit to leap from a window, with very probable loss of life, in order to flee flames; to cast oneself headlong from a tower, even with certain danger of death, in order to flee a more atrocious death which evildoers are actually about to inflict.

306. (D) When there is question of a danger to life not certain, but more or less probable, a lesser cause suffices. Thus it is licit to serve those laboring under a contagious disease, even if there is a great danger of contracting the plague; craftsmen can exercise a dangerous art, e.g., ascend the roofs of buildings, even with probable danger of death, when this is useful for the support of themselves and their family. - But if there is question of arts less necessary and more dangerous, e.g., of taming wild beasts, penitents indeed should be kept away from these, insofar as this can be done; but if they have exercised these arts for a long time, and, because of the special skill with which they are endowed, the danger is not so proximate, and on the other hand they can scarcely otherwise provide for themselves and their own, they are not to be compelled to abandon their art.

307. When something is done or omitted from which life is shortened by several years, a less grave reason suffices; for the danger of death is not so proximate.

(a) Hence it is licit for workers to blow glass, gild metals, and exercise other arts by which life is rendered shorter; for the good, both private and public, demands that sometimes human life be shortened, whether for one's own support, or for the progress of industrial or mechanical affairs. Nevertheless an effort must be made that, in the best way possible, works entrusted to craftsmen be rendered less dangerous.

(b) Regularly no one is bound to use extraordinary means in order to live longer; for the law of prolonging life for a long time does not oblige with so great an inconvenience. Thus those who inhabit a region not very healthy are not bound to seek a healthier one by going to a distant region; those who could live longer by abstaining from a certain drink or food are not bound under grave sin to abstain from these, provided they observe the laws of temperance; nor is it necessary to undergo a dangerous operation in order to prolong life, unless per accidens this is necessary for the good of the family or of the State.

III. Corollaries.

308. 1. On mutilation of oneself. It is not licit to mutilate oneself by one's own authority, unless this is necessary for preserving life or health. For man does not have full dominion over his person and members, but only dependently upon God (above, n. 34); consequently he cannot cut off his members, except from a permission of God reasonably presumed; now, since the parts exist for the sake of the whole, if the cutting off of some member is necessary or very useful for saving the whole body, the divine permission can deservedly be presumed.[1]

[1] To the point St. Thomas, 2. 2., q. 65, a. 1: "Since some member is part of the whole human body, it exists for the sake of the whole, as the imperfect for the sake of the perfect. Hence disposition must be made of a member of the human body according as it is expedient for the whole. Now a member of the human body is of itself indeed useful for the good of the whole body; yet per accidens it can happen that it is harmful; for example, when a putrid member is corruptive of the whole body... then it is licit, by the will of him whose member it is, to cut off the putrid member for the sake of the health of the whole body. And the same reason holds if it is done by the will of him to whom it belongs to care for the health of him who has the corruptive member."

309. (a) Therefore it is licit to submit oneself to surgical operations when they are judged by experts to be truly useful for preserving health, even when they are not free from danger, provided they are very useful; nevertheless it is expedient that the counsel not of one only, but of two or more, be taken, since today some favor these operations more than is fair, for the sake of experiment or gain.[2]

[2] Surbled, *La Morale dans ses rapports avec la Medecine*, Paris, t. II, pp. 188-193, 216-224.

(b) But it is not licit to mutilate oneself in order to acquire some gain or other advantage, e.g., to flee the burden of military service or to obtain more abundant alms; for this is not a sufficient reason, but smells of cowardice.

310. 2. On care of one's own body. Since the body is the instrument of the soul, and its health serves not a little for rightly accomplishing the operations of the soul, the duty lies upon each one of caring for his own body, by applying at least ordinary means for preserving health. Therefore those excesses in food and drink, labors and vigils, by which life is

notably shortened or the body quickly becomes unequal to serving the soul, are to be avoided;[1] therefore in danger of death a physician should be called.

[1] Surbled, *La Morale dans ses rapports avec la Medecine*, Paris, 1900, t. I, p. 78-83.

Nevertheless moderate austerities are by no means prohibited, by which sensual inclinations can be more efficaciously tamed; for the body is the servant of the soul and ought to be reduced to servitude, so that it may serve the higher aspirations of the mind, according to that word of the Apostle:[2] "I chastise my body and bring it into servitude, lest perhaps, when I have preached to others, I myself should become reprobate."

[2] I Cor., IX, 27. - Cf. On the Virtue of Charity, n. 767.

§ II. On Homicide.

311. Homicide means the same thing as the killing of a man. But those who are killed can be innocent, or evildoers condemned by public authority, or unjust aggressors. Hence we shall speak: 1. of the killing of the innocent; 2. of the killing of an evildoer; 3. of the killing of an unjust aggressor. - But the things which we say concerning homicide can, with due proportion, be predicated of wounding and mutilation.

[3] St. Thomas, 2. 2., q. 64; Lugo, disp. X, n. 56-223; Lessius, lib. II, c. 9, n. 36-111; Billuart, diss. X, art. 4-9; Carriere, II, n. 744-805; Ball. P., Tr. VI, n. 876-922; Lehmkuhl, n. 832-849.

I. On the Killing of the Innocent.

This can be direct or indirect, as was said above concerning suicide.

1. On the Direct Killing of the Innocent.

312. Principle: The direct killing of an innocent person is a most grave sin, injurious to God, to the neighbor, and to society. - I say most grave, because by taking away life it inflicts a most grave injury.

(a) It is a sin injurious to God; for, since He is the supreme lord of life and death, His rights are violated by such homicide; hence He severely reproves this crime both by the words related above: You shall not kill; and by these, which declare the former: "The innocent and just you shall not kill, because I abhor the impious."[4]

[4] Exod., XXIII, 7.

(b) Injurious to the neighbor; for since, from what was said above (n. 295), life is a very excellent good, and a means of enjoying many other goods, both natural and supernatural, he who voluntarily takes away the life of an innocent person does him the greatest injury; and this indeed is greater when he leaves him no time to be reconciled to God, if he is in the state of mortal sin.

(c) Injurious to society; for since the innocent person is a useful member of society, injury is done to the community by prematurely cutting off this member; whence the more useful the citizen was, the graver the crime is.

313. Corollaries. (a) It is not licit to kill the lethally wounded, the old, the sick, the dying, lest they suffer longer; nor the insane, lest they harm others, provided they can be restrained otherwise; nor a mother placed in extremis, so that the infant can be baptized; all these retain the right to life, and must be committed to God, who alone can dispose of their life.

(b) Nor can hostages (*otages*) be killed, even if the enemies who sent them have not kept the faith given, indeed even if they have killed other hostages.

(c) They sin gravely who, from whatever motive, kill infants, or directly accelerate their death: for these are innocent. Parents are guilty of a horrible crime who hand over their own children to others to be killed, so that they may make the insurance price their own.[1]

[1] "Parents without entrails insure at a high rate the head of very young children, and, coldly, slowly, let them die of starvation and misery. The death which carries off these little beings, revealing no manifest violence, is most often reputed natural, and secures good annuities to its skillful and sinister authors." (Dr. Surbled, op. cit., t. III, p. 238). - Concerning the killing of an infant in the mother's womb we speak in the Supplement to the Treatise on Matrimony, n. 72-78.

(d) Sometimes relatives or kin of someone deceased ask from the physician that the heart of the dead man be pierced or an artery opened, lest perhaps he be buried alive. Now if the physician seriously doubts concerning death, he cannot perform this, since he would expose himself to the danger of killing a man who perhaps survives; but if certain signs of death are present, puncture of the heart is not illicit, since this is done only to free relatives from vain anxieties.

2. On the Indirect Killing of the Innocent.

314. Principle: It is not licit to place an action from which certainly or probably the death of an innocent person will follow indirectly, unless from a proportionately grave cause and with a right intention. This is clear from what was said where indirect suicide was treated, above, n. 302.

Hence (a) in a just war it is licit to direct artillery (*canons*) against a besieged city, even if it is foreseen that many innocents will perish from this, provided this is held as a necessary and efficacious means for attacking the city; nevertheless it is equitable that the head of the city first be warned, so that women and infants can flee to a safe place.[1]

[1] Bonfils, *Manuel de Droit international*, 3rd edition, Paris, 1901, n. 1083-1086.

(b) If someone, while an enemy pursues, cannot avoid death except by passing through a narrow way, with the danger of trampling an innocent person, he can do this.

(c) It is not licit for a physician, for the sake of experiment, to use a new remedy, or to perform a dangerous operation, when a more efficacious and less rash remedy is at hand.[2]

[2] Guermonprez, *L'assassinat medical et le respect de la vie humaine*, Paris, 1904.

315. (d) Likewise, in industrial matters, those sin who use dangerous materials or machines, from which the life of workers is placed in great danger, especially where the law prohibits this.[3]

[3] P. Pic recounts the principal laws recently promulgated concerning this matter in various regions, *Traite elementaire de legislation industrielle*, Paris, 1903, n. 609-648.

(e) But he who places an action of itself not dangerous, or rarely and therefore not probably dangerous, from which nevertheless death follows by chance, is not morally guilty of homicide, provided he has applied ordinary diligence; thus a hunter who, while he gives himself to hunting with due diligence, by chance kills a man; for then he neither could nor ought to have foreseen death; otherwise it would have to be said if he is guilty of negligence, e.g., by imprudently playing with a gun; then he is gravely or lightly guilty, according as the negligence was grave or light.[4]

[4] Concerning accidental homicide, with respect to French law, see *Cod. pen.*, a. 319-320.

II. On the Killing of Evildoers.

316. State of the question.[5] It is indeed unjust to kill the innocent, but when there is question of evildoers who have been guilty of a most grave crime, the matter stands otherwise. For among almost all peoples, both ancient and recent, the punishment of death has been received by common usage.

[5] Meyer, op. cit., II, n. 594.

Yet the Waldenses denied that even evildoers could be punished with the death penalty: this opinion was then commonly reproved. Nevertheless, already from the eighteenth century, not a few philosophers and jurists went over to the same opinion. Thus Cesare Beccaria (1716-1793) taught that the right of inflicting the penalty of death is to be restricted to the crime of dangerous sedition, or to the case in which the death of the delinquent is the only means for restraining the crimes of others;[6] Jeremy Bentham (1748-1832), who acknowledges as the principle of morality utility alone, denied that capital punishment is useful and consequently just.[1] Ch. Lucas[2] (1803-1889) proceeded further, directly asserting that the penalty of death is neither just nor useful: for neither in the individual nor in society is there an inherent direct right over the life of the neighbor, but only the right of repelling an unjust aggressor by force; now the penalty of death established by laws is not inflicted in self-defense, since the evildoer, having been captured by authority, is no longer able to harm, but only in vengeance; and this is manifestly unjust. - Others, with Spedalieri (1741-1795), defend the same in another way; namely they say that the State obtains its rights from a social pact, and therefore does not have the right of death, since citizens could not validly renounce the right and duty of preserving life.

[6] Beccaria, *Dei delitti e delle pene*, § 16.

[1] *Theorie des peines et des recompenses*, Paris, 1812.

[2] Many others wish the penalty of death to be abolished; among whom are Mittermaier, *De la peine de mort*, transl. Leven, 1865; C. J. Paton, *Death Penalty*, New York, 1891, with the authorities alleged, p. 140-160; Hello recounts others, *Revue critique*, 1867, t. 31, p. 322.

Hence in certain regions capital punishment in fact was abrogated: in Italy, in some parts of Switzerland, and in certain of the United States of America;[3] but, after a few years, already in several of these States it was restored anew.

[3] Garraud, *Precis du Droit Criminel*, 8th ed., 1904, n. 164; Tarde, *La Philosophie penale*, 3rd ed., Paris, 1892, p. 534-536.

317. Principle: The supreme civil authority can punish with capital punishment evildoers fully convicted of a most grave crime, as often as the public good requires this.

(A) To supreme authority there certainly belongs the right of protecting society against evildoers, who disturb the public order, by efficaciously deterring them from crimes especially harmful to the security of the commonwealth and of citizens; for upon it lies the right and duty of protecting the common good against any invaders of rights whatever. Now both historically and psychologically it is clear that the boldness and propensity of some toward committing crimes are not broken except by fear of capital punishment. (a) Historically: for among almost all peoples capital punishment flourished down to these last times. Thus, already in the time of the Patriarchs, it had been said to Noah and his sons: "Whoever shall shed human blood, his blood shall be shed";[4] likewise to the Jews: "You shall not suffer sorcerers to live[5]... He who strikes and kills a man shall die the death."[6] Among the Greeks and Romans, and also other Nations, the same penalty was inflicted not only on slaves, but also on free men, whose life was greatly esteemed. The Apostle acknowledges it as legitimate, writing concerning supreme civil authority:[1] "But if you do evil, fear; for he does not bear the sword without cause. For he is the minister of God, an avenger unto wrath to him who does evil." In reality, among Christian nations, otherwise protectors of human life, the penalty of death was by no means abolished, but on the contrary was always held as a necessary means for protecting the life of peaceful citizens. But in more recent times capital punishment, removed from the midst in a few regions, after the experience of a few years, has already been restored in certain places, so that public security might be provided for more efficaciously;[2] since indeed the boldness of evildoers and the number of crimes were increasing each year. But, on the other hand, in regions in which the penalty of death was preserved rather firmly, as in England, the number of crimes is accustomed to decrease. Historically, therefore, it is clear that a penalty of this kind is an efficacious and morally necessary means for providing for the public good.

[4] Gen., IX, 6.

[5] Exod., XXII, 18.

[6] Levit., XXIV, 17.

[1] Rom., XIII, 4.

[2] Thus especially in certain parts of Switzerland and of the United States of America. As regards Switzerland, Garraud has these things, op. cit., p. 234, note 1: "Following a very active campaign of petitioning for the restoration of the death penalty, the National Council (of Switzerland) decided that a new constitutional provision would be submitted to the popular vote; it was adopted on May 18, 1879, and revises art. 65 in this sense, that each canton is permitted to reestablish the death penalty for crimes of common law. Some cantons have profited from this faculty, among others those of Zurich, Lucerne, and Zug." Likewise, of the four American States which had abolished the penalty of death, two established the same anew.

318. (b) The same is proved psychologically. For man by a certain natural instinct dreads death more than other evils; this feeling even the most abandoned of evildoers experience, though impervious to other motives; hence those condemned to death earnestly beg that the sentence be changed, and, when the punishment is imminent, not a few strive with all their strength to escape; on the other hand, from various testimonies it is clear that many are deterred from crime by terror of the final punishment;[3] but if some are not deterred from crime even by fear of death, this generally arises from the fact that, entangled by depraved passions, by an inveterate habit of evil, or by occasions, they do not think of capital punishment, or hope to elude the ministers of justice; but many others in reality abstain from crimes through terror of

the extreme punishment. - But, on the other hand, no other penalty sufficiently deters certain evildoers from homicide; not long and laborious detention, because today it is usually tempered, at least after some time, so that some value it more highly than a life indeed free, but subject to many miseries; on the other hand hope remains, because of the instability of political affairs, of recovering liberty after a short time, - nor that solitary detention which in Italy holds the place of a capital sentence: for this does not sufficiently terrify abandoned men, who retain hope of escaping.[1] Therefore both historically and psychologically it is clear that the penalty of death is a most efficacious means for deterring evildoers from crimes, and therefore can be inflicted by supreme authority, on account of the public good.

[3] Thus, in the Italian Chamber, March 10, 1865, the deputy Conforti narrated that a conspiracy for perpetrating theft and homicide had been abandoned because on that day on which it had been agreed to carry the crime into execution, two other evildoers underwent the penalty of death. Cf. Garofalo, *La Criminologie*, 1890, p. 225.

[1] On the other hand this penalty is more cruel than death itself, since it is accustomed to bring on weariness, desperation, and a certain form of insanity.

319. (B) This is confirmed by another argument from the ethical order. Justice demands that the wounded moral order be healed and repaired by suitable satisfaction; and therefore the duty lies upon the rulers of the commonwealth of taking care that grave offenses be punished by a proportionate penalty; for otherwise the moral order is disturbed and endangered. Now there are offenses so grave that, according to common estimation, they can be expiated only by the penalty of death; such are especially homicides cruelly perpetrated after mature deliberation; for offenses which include the highest injury of the moral order and the highest injury demand a penalty highest from its kind, or the penalty of death. This indeed is so true that, as the adversaries admit, the rule set forth above is approved by common sense: "Whoever shall shed human blood, his blood shall be shed."

320. The principal difficulties are solved. (a) Some indeed object that evildoers, as long as they live, can be amended for the better; therefore they are to be spared so that they may do penance and thus repair the injured order.[1] - St. Thomas had already solved this difficulty:[2] "But the fact that the evil, as long as they live, can be amended, does not prevent their being justly able to be killed; because the danger which threatens from their life is greater and more certain than the good which is expected from their amendment. They also have in the very article of death the faculty that through penance they be converted to God. But if they are so obstinate that even in the article of death their heart does not recede from malice, it can be estimated with sufficient probability that they will never recover sense from malice."

[1] Thus C. Lucas, op. cit., p. 129: "From the Christian point of view, society commits a crime greater than that of the assassin whom it immolates; it kills the soul; it is the life of the soul, it is the penitential life that it tears away."

[2] *Contra Gentiles*, lib. III, c. 147.

321. (b) Others say that in no one, except God, is there an inherent right of life and death, and therefore society usurps divine rights while it kills evildoers. - We indeed confess that in God alone there is the full and direct right over the life of man; but He can delegate to Princes, and in fact has delegated, an indirect power; for to them has been entrusted the charge of

promoting the common good of society; now the common good sometimes requires that certain evildoers be punished with the penalty of death, so that these and others may be deterred from similar crimes;[3] then they act not indeed by their own authority, but insofar as they take the place of God: "For there is no power except from God... For he is the minister of God, an avenger unto wrath to him who does evil."[4]

[3] "The common good is better than the particular good of one. Therefore the particular good must be taken away, so that the common good may be preserved. But the life of certain pestiferous men impedes the common good, which is the concord of human society. Therefore men of this kind are to be taken away from the society of men through death." (St. Thomas, l. cit.)

[4] Rom., XIII, 1, 4.

322. (c) They insist: Capital punishment, as inflicting irreparable damage, can be decreed only by an infallible authority; now what judge can claim infallibility for himself? - We willingly concede that only those are to be punished with death who, not from indications more or less probable, but from morally certain proofs, have been juridically found guilty, as we said in the thesis; but for this an infallible judgment is by no means required, but that certainty suffices which can be found in human affairs after diligent examination; in reality, does not moral certainty, which does not exclude every danger of death, suffice for performing surgical operations? Do men not also daily expose life for pursuing a private good? If the matter stands thus, why could supreme authority not punish with extreme punishment him who with moral certainty has been judged harmful to society?

323. Moreover it is equitable that death be decreed only for the gravest crimes, namely fully deliberate homicides, as in reality is done today among cultivated nations. Indeed it is to be wished that morals be so tempered that the penalty of death is no longer necessary. Meanwhile, however, it is unjust, by sparing the guilty, to expose the life of the innocent to danger.

324. Corollary: In well-ordered societies, it is not licit for a private man by his own authority to kill evildoers outside the case of legitimate defense.

For from what has been said, the right of life and death is proper to God, and therefore cannot be exercised except by those to whom it has been delegated divinely, for the good of the whole community; now, in societies already rightly constituted, the right of punishing evildoers has been granted by God not to individual citizens, but to legitimate superiors; and deservedly; for, since the killing of evildoers is ordered to the public good, it belongs only to those to whom the care of the community is committed, namely to legitimate superiors having public authority.[1] - On the other hand, no one ought to be punished with capital punishment except after a mature judgment in which, all things having been carefully weighed, the guilty man has been juridically convicted of the crime; for how many evils would spring forth if it were licit for each person, without judicial sentence, to punish evildoers? Now for a prudent and mature judgment that order is required which magistrates follow when sitting before the tribunal.

[1] St. Thomas, 2. 2., q. 64, a. 3.

Therefore the practice is to be reproved which still flourishes in certain regions, of killing certain evildoers immediately after the crime has been committed, without judicial form.[2]

[2] This practice in the United States of America is called lynching; concerning which see *The Catholic World*, August 1887, p. 593; Bryce, *The American Commonwealth*, 3rd ed., New York, 1897, t. II, p. 567. - In certain cases, when there is question of very odious crimes, and otherwise public authority is little solicitous about punishing them quickly, there can be, and in fact are, men who in good faith judge the killing of evildoers done by private persons to be licit; therefore, while this is objectively reproved, attention must especially be paid to subjective dispositions.

III. On the Killing of an Unjust Aggressor.

Although it is not licit for individual citizens directly to kill evildoers, they have the right of defending their own life or the life of their neighbor against unjust aggressors, even with the danger of killing the same.

325. Principle: It is licit for each one to defend his own life or that of others, or even the integrity of members, even with the killing of an unjust aggressor, provided nevertheless that the moderation of blameless defense is observed.

It is proved. (A) For he who defends himself, by wounding or killing the aggressor, does not directly intend the killing, but his own defense or that of others, repelling force by force; and therefore he performs an act good of itself, foreseeing the evil effect that will follow from it, namely the wounding or death of the aggressor. Now in the case he has a proportionately grave reason for permitting that effect, namely the legitimate defense of himself or others, and in addition the public good, which demands that the boldness of the wicked be broken. Nor can it be said that the invader is thus exposed to the danger of eternal damnation: for he ought to impute this evil to himself, and otherwise before he dies he is able to elicit an act of contrition. Therefore he acts licitly who defends himself, even with the killing of an unjust aggressor.

326. (B) Positive laws, ecclesiastical or civil, confirm this indeed. Thus Innocent III says: "Although all laws and all rights permit force to be repelled by force, yet because this must be done with the moderation of blameless defense, not for taking vengeance, but for repelling injury...."[1]

[1] *Decret. Greg. IX*, l. V, t. 12 *de Homicidio*, c. 18, p. 801, ed. Richter-Friedberg. - Thus also in the French Penal Code, a. 328: "There is neither crime nor offense when homicide, wounds, and blows were commanded by the actual necessity of legitimate defense of oneself or of another." Cf. for Germany, Cod. p. a. 53; for England and the United States, Bouvier, *Dict. of Law*, word Self defence.

327. The principle is explained. (a) It was said: it is licit; because generally no one is bound to defend himself in this way; for someone can, from charity, permit his own killing, lest the aggressor be deprived of temporal and eternal life, unless, however, the life of the one attacked is very useful to the common good or to the family.[2]

[2] Others add with St. Alphonsus (n. 380): unless the one attacked were himself in mortal sin, because then he would be entirely bound to defend himself. - Yet this argument does not seem to be valid; for he who acts thus performs a heroic act of charity, by which he is cleansed from his sins and justified.

(b) Of an unjust aggressor; for if there is question of a guard or minister of justice who tries to capture a guilty man or to kill one juridically condemned, the latter certainly cannot be repelled by

force and killed, because he uses his own right, indeed he performs an office; now the public good demands that violence not be inflicted upon ministers of justice legitimately exercising their office. But it suffices that the aggressor be materially unjust; hence a madman or a drunkard can be killed, if otherwise we cannot defend life.

It is moreover required that the aggressor actually bring force to bear, or at least exhibit signs of imminent aggression, e.g., by drawing a sword, seizing a gun, etc.; hence it is not licit to kill an aggressor before he has in some way begun the act of invasion; otherwise homicides would frequently be perpetrated under the pretext of legitimate defense, not without great detriment to the commonwealth. Deservedly, therefore, this eighteenth proposition was condemned, at least as scandalous, by Alexander VII, September 24, 1665: "It is licit to kill a false accuser, false witnesses, and also the judge from whom an unjust sentence certainly threatens, if by another way the innocent person cannot avoid the damage."[1] - Nor is it licit to kill an invader who has already ceased from aggression and flees, because he is no longer an aggressor, and it belongs to public authority alone to punish the guilty who are not actually attacking others.

[1] In Denzinger, n. 989.

328. (c) With the moderation of blameless defense, that is, by doing only that which is required for one's own defense; and therefore if another way of escaping the danger is at hand, e.g., by fleeing, crying out, it is not licit to kill or wound the invader; likewise if it suffices to inflict a wound, it is not licit to kill him. - Nevertheless, if someone, disturbed by a sudden attack, has not observed moderation, because time was lacking for maturely weighing all the circumstances, as often happens, he is not to be reproved for grave sin; for in practice it cannot easily be discerned what is necessary for defending oneself. Likewise if the one attacked cannot flee without great detriment, without, e.g., being regarded by others as cowardly, he can resist the aggressor even with the danger of killing him. Therefore, in a particular case, attention must be paid to the psychological dispositions of him who defends himself.

329. 2. Corollaries. It is licit to defend not only life and bodily integrity, but other goods, with the killing of an unjust aggressor: namely goods of the greatest moment, whose loss is morally irreparable.

(A) It is licit for a woman to repel by force an invader of chastity, even with the killing of the aggressor, if another means of efficaciously defending chastity is not at hand. Thus commonly. For here there is question of a good of the greatest moment, which, once lost, cannot be repaired; for a woman, by permitting herself to be oppressed, exposes herself to the danger of inwardly consenting to lust, of conceiving illegitimate offspring, and of losing reputation; if she is a virgin, she will with difficulty be married; if already married, she will introduce adulterine offspring into the family of the husband, with disgrace and detriment to the whole family; and these evils indeed are a proportionately grave reason. - But if she has already been oppressed, it is not licit to kill the aggressor, from what has been said above.

Hence it is not licit for a husband by his own authority to kill a wife detected in adultery; for the contradictory proposition was reproved by Alexander VII at least as scandalous.[1] - But whether a husband or father can kill him who attacks the chastity of his wife or daughter, when otherwise the

aggressor cannot be repelled, is controverted. In practice, however, those who, moved by indignation, kill the invader are for the most part excused: for they do not think they act badly; and generally they are not condemned by a civil tribunal.

[1] In Denzinger, n. 990: "The husband does not sin who by his own authority kills his wife detected in adultery."

330. (B) As regards goods of fortune, let us separate certain things from uncertain:

(a) It is not licit to kill him who impedes us from the attainment of goods which we do not yet possess, but to which we have a right. This is clear from the condemnation of this proposition (32) by Innocent XI, March 2, 1679: "It is licit not only to defend by deadly defense the things which we actually possess, but also those to which we have an inchoate right and which we hope to possess."[2] - And deservedly, for here there is question of an evil which can be repaired by having recourse to judges.

[2] Ibid., n. 1049; it was condemned as at least scandalous and pernicious in practice.

(b) If there is question of goods actually possessed, but of lesser moment, the same must be said, from the condemnation of proposition (31) by Innocent XI: "Regularly I can kill a thief for the preservation of one gold coin."[3] For the reason is not proportionately grave.

[3] Ibid., n. 1048; this proposition was condemned at least as scandalous and pernicious in practice.

331. (c) When there is question of goods of great moment already possessed, more probably it is licit to defend them, even with the killing of an unjust aggressor, if otherwise they cannot be preserved or recovered. - For here there is question of the irreparable loss of goods which are very useful and sometimes morally necessary for the support of life; now the public good demands that thieves who seize goods of this kind and do not wish to abandon them be intercepted in flight, even by a lethal wound, if there is need; otherwise not a few would be incited to theft. - On the other hand, charity does not oblige someone to prefer the neighbor's good, even of a higher order, to his own good, unless the neighbor is in extreme necessity; now the unjust aggressor in the case is not in extreme necessity, since, by leaving the goods which he has invaded, he can escape unharmed. Thus St. Alphonsus, n. 383, with many others.[1]

[1] Some attack this doctrine of theologians as contrary to natural equity. Nevertheless it is approved by most jurists, not only in France, but in other regions. Let Garraud be heard, op. cit., p. 213: "Suppose a thief, stealing from the safe of a merchant the titles which constitute the greater part of his fortune, fleeing with these titles, without the darkness permitting him to be recognized: the evil will be irreparable if the owner does not succeed in wounding or killing the thief: he fires and kills him; if Art. 328 (of the Penal Code) does not give him the right to do this, no tribunal will hesitate to declare that this act is not imputable to its author, whether one considers it as justified by legitimate defense, or rather as imposed by a force which the agent could not resist." - He alleges, as regards the laws of other nations: Berge, *Revue generale du droit*, 1879, t. III, p. 277; Alimena, *I limiti e i modificatori dell' imputabilita*, t. III, p. 97 seq.

This indeed is admitted by almost all when there is question of a nocturnal aggressor; for, besides the reasons already brought forward, it can be feared that the invader also wishes to take the life of the owner.

In either case, according to all, the owner can rescue his own things from the robber; and if the latter resists and threatens death, it is licit for the owner to defend himself, even by killing the invader.[2]

[2] *Cod. paen. gall.*, a. 329.

332. (C) If honor or reputation is attacked, regularly it is not licit to kill the unjust aggressor. - The reason is that loss of honor and reputation generally is not irreparable, since it can be preserved or recovered by other means; on the other hand the common good demands that reputation not be repaired by the killing of the aggressor; for an approach would lie widely open to innumerable slaughters, if it were licit for each person to vindicate his own reputation by violent means, especially because each person would be judge in his own cause, concerning a matter of whose gravity it is difficult to judge. - Deservedly, therefore, this proposition (30) was condemned by Innocent XI as at least scandalous and pernicious in practice: "It is lawful for an honorable man to kill an invader who strives to bring calumny upon him, if otherwise this disgrace cannot be avoided: the same also must be said if someone strikes a slap or strikes with a club, and after the inflicted slap or blow of the club flees."[3]

[3] Denzinger, n. 1047.

333. I said regularly; for if someone is attacked not only by words, but by deeds, e.g., by a slap or club, he can repel injury with the moderation of blameless defense; and if the aggressor continues to inflict injury, and brings force to bear and threatens death, the one attacked can repel force by force, even with the killing of the aggressor.

Likewise he who is struck by a slap, and, inflamed with anger, immediately strikes the aggressor and wounds and kills him, is often excused from grave sin, because he did this without mature deliberation. - But when injury has already been inflicted, whether by words or by deeds, it is not licit to take vengeance for it, but recourse must be had to judges.

§ III. On the Duel.

334. 1. Origin of the duel. Among the ancients there were no duels properly so called, for the sake of vindicating honor, but singular combats between leaders or soldiers of two armies for the purpose of putting an end to battle; thus David with Goliath, Menelaus with Paris, Hector with Ajax, Achilles with Hector, Turnus with Aeneas, the three Horatii with the Curiatii engaged. Besides, at Rome there flourished bloody fights of gladiators between captives or slaves, indeed sometimes between free men, for the sake of displaying strength. - In the Middle Ages judicial duels were in use, for the sake of ending a lawsuit, which seem to have been borrowed from the Germans and Lombards: namely, when full proof could not be brought before a judge, a duel between the litigants was often in use, with the magistrates approving that the matter be left to the judgment of God, according to this: if laws do not suffice, let us come to arms. - But tournaments held among knights differed from duels, since they were not undertaken with a hostile mind, but for the sake of exercise and for the display of fortitude.

[1] J. P. Pigna, *Il duello*, 1554; Boyssat, *Recherches sur les duels*, Lyon, 1610; J. Savaron, *Traite contre les duels*, Paris, 1610; F. Bacon, *Charge concerning duels*, 1614; Cockburn, *History of duels*, London, 1720; Basnage, *Dissert. historique sur les duels*, Basel, 1740; Stadler, S.J., *Tr. de duello*, Ingolstadt, 1751; F. Gorguereau, *Le duel considere dans tous les rapports historiques, moraux et constitutionnels*, Paris, 1791; Pinet, *Du duel en jurisprudence*, Paris, 1829; Cauchy, *Du duel considere dans ses origines et dans l'etat actuel des moeurs*, Paris, 1846; Mendez, *Essai sur le duel*, 1854; Millingen, *History of duelling*, London, 1841;

Sabine, *Notes on duel*, Boston, 1859; Tavernier, *Le duel*, Paris, 1884; Letainturier-Fradin, *Le duel a travers les ages*, Paris, 1892.

But already from the sixteenth century duels properly so called, for the sake of vindicating honor, began to prevail; namely, if anything harmful to reputation or honor had been inflicted, nobles and military leaders judged that this could be vindicated only by arms and washed away by blood; for they thought that they did not carry swords in vain. This cruel custom indeed first began to flourish among nobles and soldiers, afterward also among men of the robe; holy men and some Princes indeed resisted it; but today among many Nations it still flourishes, especially among leaders, soldiers, or political men.[2]

[2] Since duels are not recounted in public documents, it is difficult to know how many there are in various regions. In France, besides duels held among soldiers, from the year 1878 to the year 1890 about 647 are counted, of which not a few (1/77) were lethal (in Garraud, *Traite du Droit Penal*, Paris, 1891, t. IV, p. 310; cf. *Questions Actuelles*, t. XIV, 1892, p. 162-163).

335. 2. Notion and species. (A) A duel, as it is understood today, is a singular combat between two or more, entered into by agreement, with arms apt for killing or gravely wounding. - Therefore three things are required for a duel: (a) a singular combat, which is entered upon between two, or between several, but one against another; it matters little with what intention it is done, for the sake of exercise, or of vengeance, or of repairing honor, or of showing fortitude; (b) entered into by agreement, in which the adversaries agree concerning time, place, and arms; hence if two immediately fight from an impulse of anger, or if one provokes and attacks another and the latter defends himself, it is not properly a duel; (c) arms apt for killing or gravely wounding; therefore it is not necessary that in fact death or a grave wound follow, but it suffices that of itself a grave wound can be inflicted; hence fights which are done with the fist, rods, staffs, or with a sword of blunted edge, under the condition that neither be lethally wounded, are not duels.

(B) A duel is public when it is entered into from public authority and on account of the public good, e.g., for ending a dispute between two nations; or private when it is undertaken in a private name. The former is licit, if it is done on account of the common good, for ending war, lest the blood of many be poured out: for if in war army can fight against army, leaders can agree that one fight against one, or a few against a few; today, however, singular combats of this kind have gone into disuse. But if it were entered into on account of a particular good, even with the authority of a judge, for vindicating injury or manifesting truth, it would be illicit, since other means are at hand for obtaining these ends. But the latter is a grave sin, as will be clear from the following proposition.

336. 3. Principle: A duel, entered into by private authority, is always of itself gravely illicit. It is certain.

It is proved: (A) By authority. For the Church has more than once reproved the duel as a grave crime; thus the Council of Trent imposed penalties against duelists, declared them excommunicated, and, if they died in the combat, judged them unworthy of the honor of ecclesiastical burial; it exposed its mind concerning the gravity of this sin by these words: "Let the detestable use of duels, introduced by the fabrication of the devil, so that by the bloody death of bodies it may gain also the destruction

of souls, be utterly exterminated from the Christian world."[1] Benedict XIV enlarged and explained the Tridentine sanctions, exploding various reasons alleged by duelists.[2] The Code renewed the excommunication to be incurred by the very fact and simply reserved to the Supreme Pontiff, already issued by the Roman Pontiffs, against "those perpetrating a duel, or simply provoking to it or accepting it, or giving any assistance or favor whatever, and also those deliberately watching it, and those permitting it, or, as much as is in them, not prohibiting it, of whatever dignity they may be."[3] Already Leo XIII, confirming the decrees of his Predecessors, had lucidly set forth how empty are the things which are customarily brought forward for defending or excusing the savage custom of the duel.[1]

[1] Sess. XXV, cap. 19 *de Reformatione*.

[2] Constit. *Detestabilem*, Nov. 10, 1752, where he condemns the following propositions as false, scandalous, and pernicious:

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

2. "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 is not going to follow, as being about to be impeded by others."

3. "A military leader or officer accepting a duel from grave fear of loss of reputation or office does not incur the ecclesiastical penalties issued against duelists."

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

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

This manner of speaking indeed seems harsh; but it is therefore employed so that vain evasions may be forestalled; if the duel were permitted in these cases, empty reasons would soon be devised for excusing every duel.

[3] Code, can. 2351. - With this excommunication are punished:

A) The duelists themselves, that is, those who perpetrate a duel; indeed, also he who provokes another to a duel, or who accepts, even if in reality the duel does not follow;

B) Those giving any assistance or favor whatever, that is, a) all and each who cooperate in any way with a duel. Thus: seconds, unless they accept this office with the intention and hope of altogether impeding the duel; - those ordering that a duel be done; - those persuading or advising, if the advice or reason was efficacious of itself, and the duel follows; - the physician who, asked by the duelists, assists at the duel; - the physician and confessor who, by agreement with the duelists, stand in a neighboring house or in a nearby place.

b) Those deliberately watching, even from mere curiosity, but not those who watch while passing by by chance, or in secret, nor those who go to the place of combat in order altogether to impede the duel;

c) Those positively permitting the duel, and indeed also those who, being endowed with authority, do not prohibit it, as much as is in them, when they ought and are able to prohibit it.

Cf. Treatise on Censures, n. 1182; J. Sole, *De delictis et poenis*, Rome, 1920, p. 320-325.

[1] Apostolic Letter *Pastoralis officii*, Sept. 12, 1891, to the bishops of the German and Austro-Hungarian empire.

337. (B) By reason. (a) For the duel by its nature directly tends to the killing or wounding of the adversary; certainly, as Leo XIII says (l. c.), "those who provoke to a private combat or accept

one offered do this, and direct their mind and powers to this, bound by no necessity: to take away life or at least to inflict a wound upon the adversary"; now directly to intend this is a grave sin, from what has been said above, n. 312. - Nor can it validly be said that here there is question of the case of legitimate defense; for there is no urgent necessity, since the aggression, if there was any, is not actually existing but already past; on the other hand, recourse can be had either to judges or to upright men who can compose the matter peacefully; indeed recourse to arms cannot vindicate honor or reputation: "for although," Leo XIII continues, "he who, after receiving injury, has challenged to the combat, departs victor from the combat, this will be the judgment of all sensible men: by such an outcome of the combat, the challenger is proved indeed better in strength for wrestling, or in handling arms, but not for that reason better in honesty; but if the same man falls, to whom again would this manner of protecting honor not seem imprudent, not plainly absurd?" Therefore the duel can by no means be excused under the pretext of legitimate defense, especially because it often arises from a passion for revenge, which is especially opposed to Christian charity.

338. (b) Besides, he who undertakes a duel rashly casts his own life into grave and manifest danger; but the natural and divine law prohibits this, when otherwise there is no reason of office or charity which may persuade this rashness. And this manner of acting is to be reproved all the more because duelists bring damage not only upon themselves, but upon their own family, or that of the adversary: for if either one or both are wounded or killed, how many dissensions, envies, and miseries arise from this?

339. (c) Moreover, by duels the social order is disturbed; for if it is licit for each person to vindicate his own rights by private force and hand, and to avenge the honor which he thinks violated, it is finished with the legitimate authority of judges, and with the peace of families and society; force will be repelled by force, even outside the case of actual and unjust aggression, and thus the morals of Barbarians will begin to reign everywhere.

340. 4. The difficulties are solved. (a) Many indeed object that they cannot refuse an offered combat without being held as sluggish and cowardly.

Leo XIII, l. c., responds: "If the duties of men were to be measured from the false opinions of the crowd, not from the eternal norm of the right and just, there would be no natural and true distinction between honorable actions and shameful deeds. The wise men of the gentiles themselves both knew and taught that the fallacious judgments of the crowd are to be spurned by a brave and constant man." Certainly he exhibits greater fortitude who, obeying the voice of conscience, despises the empty judgments of the crowd, than he who, against the dictate of conscience, undertakes the offered combat lest he be despised by others.[1]

[1] So that sensible men may more easily and efficaciously refuse the duel, it is altogether expedient that they be associated and bind themselves by pact to avoid all combats of this kind. This was already done in past centuries; cf. Faillon, *Vie de M. Olier*, 4th ed., Paris, 1873, t. II, p. 258.

341. (b) At least, not a few continue, duels must be permitted to soldiers, so that by such exercise military virtue may be sharpened, and at the same time an end may be imposed upon quarrels which otherwise would arise frequently among soldiers.

To this Leo XIII says: "The incentives of military virtue look to this, that the city be better prepared against enemies. But can this be effected by the help of that custom which by its own nature looks to this, that, when a disagreement has arisen among soldiers, of which the causes are not rare, from the individual parts of the defenders of the fatherland one or the other be killed?" - And indeed there are other means for composing disagreements,[2] namely the judgment of leaders or arbiters (*jury d'honneur*).

[2] Among some nations, e.g., the English, duels are strictly prohibited, and the mark of infamy is by no means branded upon those avoiding singular combat. Cf. *Science Sociale*, t. XXIV, 1897, p. 77-92.

342. (c) They insist: most duels are by no means dangerous, since the adversaries stop as soon as a light wound has been inflicted and the first drops of blood are shed.

It happens not rarely that, notwithstanding an agreement of this kind, a grave wound or death itself is inflicted in the heat of the fight. Besides, is it not ridiculous to agree upon such a condition? What special virtue is inherent in the first drops of blood, that they may vindicate the honor of the offended man? Is this not an ignoble vestige of a ruder age and foreign barbarity?

343. 5. On academic duels. In certain regions, especially in Germany, duels flourish which are called academic, in which, namely, students of the academies, using a certain small knife, try to inflict upon themselves an incision or wound in the face, the other parts of the body being well covered; in these, death or mutilation is not intended, nor always vengeance or reparation of honor, but often the display of fortitude and strength; very rarely does death or a grave wound follow from this. - Nevertheless the S. C. of the Council, having been questioned concerning this matter, on August 9, 1890, responded that irregularity is incurred in this case by the duelists and their seconds, from infamy of law.[1] From this it follows that contests of this kind truly are duels, since infamy of law is a penalty imposed by Trent upon duelists; in reality the conditions set forth above are found there: singular combat, entered into by agreement, with arms apt for gravely wounding; although death or mutilation rarely follows, nevertheless the danger of both is present.

[1] In *Acta S. Sedis*, XXIII, p. 242.

344. 6. Points to be noted for practice. Since duels in certain armies are sufficiently frequent, and are often imposed by commanders, there can be soldiers who unwillingly in good faith undertake a singular combat, whether they are ignorant of the censures attached to the same, or falsely persuade themselves that they cannot avoid such a fight; therefore it can happen that, on account of good faith, they are excused from censures or grave sin, from what was said in the Treatise on Human Acts, n. 94. Likewise, when they approach the sacred tribunal and otherwise are found well disposed, it is not always expedient that they be questioned specifically concerning the purpose of never refusing an offered combat; it suffices that in a general way they will to observe the divine and ecclesiastical laws. Cf. Treatise on Penance, n. 105. - On the other hand, account must be taken of the scandal which would be given if a Catholic soldier or commander accepted a duel.

§ IV. On War.

345. Preliminary notes. War differs from the duel, since it is not done between two private persons, but between two or more nations; and also from sedition, which has place between parts of one Nation dissenting from one another. It can be described: a contest of two or more nations fighting among themselves by force, for vindicating true or pretended rights.

[1] St. Thomas, 2. 2., q. 40; F. de Vitoria, *Relectiones Morales*, Cologne, 1696, p. 410-467, *De jure belli*; Suarez, *De Caritate*, disp. XIII, *De bello*; Grotius, *de Jure belli ac pacis*, The Hague, 1680; S. Pufendorf, *De Jure naturae et gentium*, Amsterdam, 1688, lib. VIII, c. 6-8, p. 879-903; Meyer, t. II, n. 732-765; F. de Martens, *La Paix et la Guerre*, translated from Russian by the Count de Sance, Paris, 1901; H. Bonfils, *Manuel de Droit international*, 3rd ed., 1901, p. 563-871, where many modern writers are alleged.

Defensive war is often distinguished from offensive war: the former is undertaken in order to repel by force force inflicted by another nation; the latter brings force upon another nation and disturbs an existing peace. But sometimes apparent aggression is nothing other than defense, e.g., if provinces already unjustly occupied by enemies are invaded.

I. On the Legitimacy of War.

346. Principle: In order that war may be undertaken legitimately, a threefold condition is required and suffices: the authority of the supreme civil power, a just cause, and a right intention.[2]

[2] Thus St. Thomas, 2. 2., q. 40, a. 1.

1. There is required: (A) Supreme authority; for it does not belong to a private person to move war, since he can pursue his right before tribunals, even when injury has been inflicted by a foreigner; but only to him to whom the care of the commonwealth has been committed: for there is question of a matter pertaining to the good of the whole society; and therefore, just as it belongs to supreme authority to use the sword against evildoers who disturb the social order from within, so it belongs to it to protect the commonwealth from exterior enemies by the military sword. But this supreme authority sometimes resides in princes, sometimes in presidents of the commonwealth, with the assent of the Legislative Assembly;[3] in whatever hypothesis, it is licit to declare war only after mature deliberation, and after upright men and experts in international law have been consulted: for there is question of a matter of most grave moment.

[3] Thus in France: "The President of the Republic cannot declare war without the prior assent of the two Chambers." (*Loi constit.* of July 16, 1875, a. 9.)

347. (B) A just cause; and this must be proportionately grave; now since in wars, especially modern wars, many men are killed and innumerable resources are destroyed, war can be declared only from a most grave cause; indeed it is required that it be necessary, namely one for which no peaceful means can provide a remedy. Therefore, before recourse is had to arms, a way must solicitously be sought by which the dispute that has arisen can be settled peacefully, whether by sending ambassadors, or by having recourse to mediators or arbiters,[1] as often as this can be done without dishonor.

[1] At The Hague (*La Haye*) an international tribunal was instituted in the year 1899, for peacefully settling disputes which arise between various Nations: it is certainly to be wished that recourse be had to this tribunal for the most part, rather than to arms; cf. De Martens, *La Conference de la Paix a la Haye*, Paris, 1901; H. Bonfils, op. cit., p. 527. - The same author shows that arbitration was already in use, and indeed with a happy outcome, p. 533-542.

348. Among just causes are numbered: the unjust invasion or detention of some province by enemies; grave injuries inflicted either upon the nation itself, or upon ambassadors, or upon citizens, which a foreign nation obstinately refuses to repair; violation of a treaty or pact, with great detriment to the commonwealth; violation of neutrality, as they say; the necessity of bringing aid to another people unjustly oppressed. - But diversity of religion or the desire of converting infidels to the faith by no means suffices: for true religion is propagated not by arms, but by prayers and preaching.[2] - Nor the sole enlargement of empire: otherwise there would be an equally just cause on each side of those waging war, and the right of the stronger, not the stronger right, would prevail everywhere. - Nor the singular progress of some nation, which so increases in power that it now surpasses neighboring nations formerly equal. - Nor one's own glory or the private good of the Prince or of his family: for private good ought to yield to public good.

[2] Vitoria proves this at length, op. cit., *De Indis*, p. 305-409.

349. Yet here it can be asked whether a cultivated nation can invade the territory of a barbarous nation, in order to impart to it the benefit of modern civilization. And here indeed a distinction is needed: (a) if a certain nation has more citizens than it can nourish, and on the other hand there are regions by no means or little cultivated, because of the scarcity of inhabitants or their ignorance or sloth, it is not unjust by peaceful means to occupy almost empty territories, while giving fair compensation to the natives; but if they do not wish to accept this and wish to repel the occupiers by force, those who use moderate force to retain the territory which they need for procuring the necessities of life for themselves cannot be reproved for injustice; for the earth was entrusted primarily to our first parents for assisting human necessities. (b) But if, under the pretext of imparting a higher civilization, regions already sufficiently cultivated by their inhabitants are invaded by force and arms, the aggression seems to be unjust: for civilization ought to be propagated not by arms, but by persuasion, industry, and commerce; otherwise nations which consider themselves more cultivated will soon invade and oppress others.

350. (C) Right intention, by which, namely, it is intended that the good of society be promoted or evil warded off; therefore intentions which are opposed to Christian charity or justice must carefully be removed, such as desire of harming, cruelty of taking revenge, lust for dominating, an implacable mind. Therefore occasions of war are not to be sought on account of the great profit hoped for from it: "For it is of the utmost savagery," says Vitoria, op. cit., p. 466, "to seek causes, and to rejoice that there are causes for killing and destroying men whom God created, and for whom Christ died; but one ought to come to the necessity of war compelled and unwilling." Indeed equity counsels that Rulers desist from that which they foresee will be an occasion of war; for the occasion of such grave evils must carefully be removed.

351. 2. It suffices, or, with all the conditions set forth above having been posited, war is licit. For often war is the only means by which some nation can efficaciously protect its own existence or rights of great moment; for there is no tribunal on earth, even today, which can compel nations dissenting among themselves to settle a dispute peacefully. Now a nation can defend itself and its rights, when they are of most grave moment, against unjust aggressors; for if private persons can do this, in the case of actual aggression, a fortiori a nation can, which has the same and more powerful rights, insofar as it enjoys public authority; but if an enemy is not actually attacking, but does not wish to repair a grave injury inflicted, rights can be vindicated by force, since there is no tribunal before which they can peacefully be sought again; otherwise the unjust and violent would soon oppress the honest and meek. Therefore war can be licit.

Nevertheless it is to be wished that soon an international tribunal be instituted before which nations dissenting about a matter of grave moment are bound to present themselves; and indeed it is equitable that the president of this tribunal be the Roman Pontiff, vicar of Him who is deservedly called the Prince of peace.

352. Corollaries. (a) For declaring offensive war a probable motive does not suffice, but a morally certain cause is required; thus commonly. For since here there is question not only of one's own rights, but of the rights of others, and on the other hand so many and so great evils follow from war, it is not licit to use probable opinions in a matter of such moment. Hence it is necessary to weigh the causes of war with the greatest prudence, to hear the reasons of the adversaries, if they wish to discuss from fairness and goodness, and to seek the counsel of upright and wise men, who may speak with liberty, without anger and hatred. When this has been done, if doubt remains, recourse must be had to arbiters; if the other party rejects this recourse, a legitimate cause for declaring war is now had.

(b) Even when a just cause certainly exists, justice demands that, before war is begun, reparation be sought from the adverse party; and if suitable reparation is offered, one must abstain from war. This is clear from what was said above; for war must be warded off by all legitimate and honorable means.

II. On the Mode of Conducting War.

353. What is licit or illicit in time of war can be defined only with difficulty; some things are determined by natural law, some by the law of nations; and since customs are diverse according to times and places, certain things today among cultivated nations are held as illicit which formerly were esteemed as legitimate. Hence in practice the modern expositors of international law must be approached, who declare at length what is licit, with attention paid to the customs, conventions, and laws of various nations.[1] We hand down only certain more general things briefly.

[1] Cf. H. Bonfils, op. cit., p. 571-877. - Hence not a few of the things which are set forth by older theologians on this matter, with circumstances changed, must be reformed today.

354. (A) Today, among cultivated nations, the declaration of war ought to be preceded by what they call an ultimatum, that is, an intimation concerning war soon to be undertaken, unless such or

such a condition be fulfilled; for thus a last opportunity is given to the enemy of repairing the injury inflicted. - Moreover at the time when war is declared, humanity demands that to foreigners living within the borders of the territory some space of time be granted, within which they can provide for themselves and their goods.

355. (B) Once military operations have begun, it must be kept before the mind that war is not waged against private citizens, but against the nation as a public person. (a) Hence, although all things are licit which are necessary for breaking the forces of the enemies, it is held today as illicit to usurp the goods of private persons without compensation,[1] and a fortiori directly to kill noncombatants or reduce them into captivity.[2] But since the expenses of war can be exacted from the enemy, the victor, when cities and villages have been captured, can impose taxes, provided they are proportionate to the resources of the inhabitants;[3] but to give a captured city to the army for plunder is not licit today.[4]

[1] H. Bonfils, op. cit., p. 664-682.

[2] Ibid., p. 638-643.

[3] Ibid., p. 674-677.

[4] Ibid., p. 678-680.

356. (b) It is licit to besiege fortified citadels, and to deprive them of water and food, so that they may submit themselves more quickly; likewise to discharge artillery (*canons*) against them, even with the danger of killing innocents; to demolish houses, even monasteries and churches, when the enemies use them to protect themselves; likewise to destroy the walls of a city, etc.; because all these things are necessary for conquering the enemies. - But it is illicit to infect springs or wells with poison, or to use poisoned weapons, because these things, as cruel, are prohibited by the modern law of nations.

357. (c) Whether reprisals are licit, that is, actions otherwise prohibited by international law, when the enemies first have violated the law of nations, is not so certain. If they are employed only for this end, that the enemies may thus be compelled to avoid injuries of this kind, strictly speaking they are not unjust, because they are one of the means of averting similar injuries in the future. But since in this matter it is easy to exceed, and on the other hand this mode of acting can induce the enemy to inflict new and worse injuries, generally it is expedient to abstain from this, while nevertheless protesting against an open violation of international law.[5]

[5] Ibid., p. 575-579.

(d) To prepare ambushes for enemies, and to use various stratagems for overcoming them, is part of military prudence, and is prohibited by no law; likewise it is licit to search out the secrets of the enemies and, when these are known, to use them for conquering the same more easily; for all these things are very useful for pursuing the end of war.

358. (C) When war has been ended and the enemy asks for peace, the victor ought to use the victory obtained moderately. For he can:

(a) Exact that for which war had been declared, e.g., recovery of a province, satisfaction for grave injury inflicted, etc.; for since the war is supposed just, it certainly gives the power of vindicating rights which he already possessed beforehand; (b) demand an equitable indemnity for the expenses of war and other damages inflicted on the occasion of the war; for all these things are deservedly imputed to the enemy who unjustly undertook war; (c) exact securities for future safety; for the victor ought wisely to provide for his own security; e.g., the conquered nation can be bound to hand over fortified places situated on the borders into the hands of the victor, at least for a time, or to demolish them and not build new ones, - but not to cede to the victor all provinces and cities captured during the war; yet certain parts of the occupied region could be retained by way of indemnity, if the conquered could not pay money.[1]

[1] H. Bonfils, op. cit., p. 874-877.

III. On the Duties of Commanders and Soldiers.

359. 1. Duties common to both. (a) In time of a just war commanders and soldiers are bound to serve the fatherland, even with danger to life, because the public good demands this. Hence they cannot desert military service, and deserters ought to return to camp; but those who would flee to the enemies and render them any help whatever would be traitors and guilty of a grave crime.

(b) If the war is certainly and evidently unjust, it is not licit to serve as a soldier, nor to kill enemies in battle; for unjust aggression and the killing of an innocent person are something intrinsically evil. But in practice this rarely happens; for even when war is unjust in itself, for the most part it does not seem to be such to soldiers, who otherwise neither are accustomed nor generally are able to inquire concerning the legitimacy of war: for this is left to the supreme authority and to the Legislative Assembly.

(c) In doubt whether war is just, soldiers already hired, or otherwise called under the banners by supreme authority, are not bound to inquire concerning the legitimacy of the war, but can presume that it is just. Otherwise it must be said of foreigners who voluntarily wish to enter the army; they cannot serve as soldiers unless first the justice of the war is clear; for there is question of inflicting most grave damage upon another, and they cannot freely expose themselves to the danger of killing innocents.

360. 2. Duties of commanders. (a) Upon them lies the duty of using all legitimate means for bringing back victory, and therefore of following the rules of military art in the best way they can, - of watching over discipline, - of taking care that, insofar as this can be done, nothing be lacking to soldiers either as regards the health of the body or as regards the salvation of the soul.

(b) They ought to follow the international laws of war, to restrain useless plunderings, devastations, and the killing of innocents by suitable penalties.

(c) They can indeed exact from inhabitants those things which are necessary for the support of the army, but they ought to pay the price of these, either immediately or after the war.[2]

[2] "Prestations in kind shall, as far as possible, be paid for in cash; if not, they shall be recorded by receipts" (*Acte de la Haye*, art. 52).

361. 3. Duties of soldiers. (a) Soldiers ought to obey commanders, and not begin a hostile action unless the same command them.

(b) Since today the right of plunder is not acknowledged, they cannot make the spoils of enemies their own, nor a fortiori take away the goods of private persons.

Scholion on Sedition and Tyrannicide.

362. (A) Active sedition against legitimate civil authority has always been reproved in the Church. The ancient Christians, even while persecutions raged, served the emperors in all things which pertained to civil affairs, and did not resist them except in the cause of faith, because it is better to obey God than men. Deservedly, therefore, St. Thomas teaches that sedition is a mortal sin, and so much the graver as the common good is greater than private good.[1] (B) If there is question of tyrannical power usurped, it was commonly taught that a tyrant can be killed by any private person, with certain conditions posited: (a) that it be certain the tyrant has no right to the kingdom; (b) that there likewise be no superior to whom recourse can be had; (c) that the commonwealth does not contradict the killing of the tyrant; (d) that from his killing more and greater goods than evils can be expected.[2] These conditions indeed rarely occurred together. (C) As regards legitimate power, but acting tyrannically, passive resistance is of itself licit and sometimes obligatory.

[1] St. Thomas, 2. 2., q. 42, a. 2. - Cf. St. Alphonsus, *Homo Apostolicus*, Tr. VIII, c. 2, n. 13; Meyer, II, n. 522-537.

[2] Billuart, diss. X, art. 2.

363. But today, since the exercise of supreme authority is especially in the hands of the Legislative Assembly, whose members are chosen by the votes of citizens, the most efficacious means for shaking off tyranny is not sedition, nor rebellion or tyrannicide; but the provident and perpetual association of upright citizens, which should strive with all its strength to elect honest and upright men, who in the Legislative Assembly may be able to restore and protect true liberty. For in our days the votes of citizens have greater force than arms of any kind; but the votes of individuals are of little value, unless by common counsel the upright are united among themselves.

Art. III. On Injuries Concerning the Goods of the Soul.

364. After the things said concerning injuries concerning the goods of the body, we must now treat of injuries concerning the goods of the soul. Now the principal goods of the soul are: (a) reputation, or the good estimation which we enjoy among others, which is injured in two ways: internally by rash judgment, but externally by detraction or defamation; (b) honor, which consists in the acknowledgment of our excellence, and is offended by contumely; (c) truth, to which are opposed lying, when what is false is said, and violation of a secret, when truth is revealed which ought to have been kept silent.

§ I. On Rash Judgment.

365. 1. Notion. (A) The good estimation to which the neighbor has a right, as long as his malice is not clear, is injured as often as by slight and insufficient indications we think evil about him and give consent to this thought.

[1] St. Thomas, 2. 2., q. 60, a. 2-4; Sotus, lib. III, quaest. IV, a. 3-4; Lugo, disp. XIV, n. 10-33; Sayrus, *Clavis regia sacerdotum*, Venice, 1618, lib. XII, c. 3; St. Alphonsus, n. 962-967; Carriere, n. 860-868; Ball. P., Tr. VI, n. 1056-1066; Lehmkuhl, n. 1185-1187; Haine, *De Decalogo*, q. 167-169; Noldin, n. 647-650.

(B) There are various grades toward rash judgment: (a) doubt concerning the neighbor's honesty, when we deliberately suspend judgment concerning his probity, and indeed from insufficient motives; (b) suspicion, by which, from slight indications, not indeed firmly, but with great fear of erring, we judge that the neighbor has done something evil; (c) opinion, by which not certainly, but probably, from insufficient motives, we pronounce that the neighbor has done something evil. - Rash judgment properly so called is a firm assent of the mind concerning the sin or fault of the neighbor conceived without sufficient reason. - Psychologically, the transition from doubt and suspicion into firm judgment is easily made.

In all these grades, rashness arises from this, that someone judges evil of the neighbor without sufficient reason; but if he were judging according to proofs and things alleged, doubting when a sufficient reason for doubting is present, or pronouncing certainly when moral certainty is present, the judgment would be prudent, not rash, and therefore not sinful under this head.

366. (C) The causes from which rash judgment proceeds are assigned as three by St. Thomas:[2] "In one way indeed from this, that someone is evil in himself; and from this very thing, as if conscious of his own malice, he easily thinks evil of others... In another way it comes from this, that someone is badly affected toward another; for when someone despises or hates someone, or is angry with him or envies him, from slight signs he thinks evil about him, because each one easily believes what he desires. In a third way it comes from long experience; whence the Philosopher says that 'old men are especially suspicious, because many times they have experienced the defects of others.'" - Therefore there are three causes: the depravity of the one judging himself; hatred and envy; experience of human frailty. The first two show perversity of affection and increase the malice of the act; the third diminishes the same.

[2] St. Thomas, q. 60, a. 3.

367. 2. Principle: Rash judgment properly so called in a grave matter is a mortal sin against justice.

It is explained; here there is question of rash judgment properly so called, that is: (a) certain, not indeed metaphysically but morally, insofar as it is firmly judged that the neighbor has done something evil; for if the judgment is only doubtful, generally the injury inflicted upon the neighbor is not grave.

(b) Deliberately brought forth, that is, after sufficient advertence of the mind, by which the one judging rashly attends to the gravity of the matter and the slightness of the motives, and nevertheless wills to give assent; therefore, if the judgment is sudden, conceived from levity rather than from

malice, the sin will be only light; and under this head many rash judgments, grave of themselves, do not exceed venial sin.

368. (c) From insufficient motives; for he who from a grave or even probable motive judges sinisterly about another does not sin gravely; yet he sins lightly if, with all the circumstances considered, the judgment exceeds the limits of prudent assent. Hence in practice attention must be paid to the various circumstances of person, time, place, etc. - Thus if a man of depraved morals speaks lingerlingly with a suspect woman, it is not rash to judge that something evil is being transacted there; otherwise, if an upright man has conversation with the same woman; - if someone unknown secretly and at night enters another's dwelling, it is not rashly judged that a depraved intention is present in him; otherwise if by day a known person enters openly; - likewise if seditious men gather in a dark place and converse there in a low voice, they are deservedly judged to be conspiring toward something evil; otherwise, if there is question of upright men who are gathered in an open place.

(d) In a grave matter, for if the matter is light, the sin will be only venial. But matter is held grave which, with attention paid to the quality of the person and other circumstances, notably injures his reputation; e.g., if someone rashly judges that some soldier, who has several times fought a singular combat, provoked an enemy to a duel, the sin is not grave, since the soldier in question would by no means judge himself injured by this judgment; otherwise if the same judgment were made concerning a priest.

369. It is proved. (A) Each one has a strict right to preserving a good reputation and good estimation among others, as long as it is not morally certain that he is wicked; now that right is gravely violated by rash judgment clothed with those conditions which we have set forth above; since, in a grave matter, without sufficient motive, deliberately and certainly, we judge that the neighbor is guilty of some sin or vice, and unjustly deprive him of the good estimation to which he had a right among us.

This indeed will be better understood if we attend to the three things required for a judgment to be brought equitably: authority in the judge, accurate knowledge of the cause, and perfect integrity, or immunity from prejudices and passions; now these three things are lacking in rash judgment: (a) authority is lacking, since private men, superiors excepted, have received no mandate for judging others; (b) accurate knowledge of the matter is lacking, since by hypothesis the judgment is rash; on the other hand, often judgment is brought from fallacious appearances or from false testimonies of others, and not only concerning external acts, but also concerning intentions which are known to God alone; (c) integrity is lacking, since judgments of this kind for the most part arise from envy, hatred, or prejudices.[1]

[1] Bourdaloue solidly develops this, *Careme*, Sermon for the Friday of the Fifth Week, on Rash Judgment.

370. Hence Scripture prohibits us from judging and condemning the morals of others: "Judge not, that you may not be judged: for with what judgment you shall judge, you shall be judged... Condemn not, and you shall not be condemned";[2] and especially lest, while we ourselves are bound by the same or greater sins, we judge severely concerning the lesser sins of others: "Wherefore you are inexcusable, O every man who judges; for in that in which you judge

another, you condemn yourself: for you do the same things which you judge";[3] hence he who judges his brother offends the law: "He who detracts from a brother, or who judges his brother, detracts from the law, and judges the law."[4]

[2] Matt., VII, 1-2; Luke, VI, 37.

[3] Rom., II, 1.

[4] James, IV, 11.

371. 3. Corollaries. (A) Rash doubt, suspicion, and opinion concerning the probity of the neighbor generally are only venial sins, because they do not utterly take away the good estimation of the neighbor, but only diminish it, and therefore do not inflict a grave injury.

Yet in a twofold case they can be mortal: (a) if they are deliberately brought forth concerning most grave sins, without any probable foundation, e.g., if someone rashly suspects that a pious priest is a heretic, or that an upright man and one above every exception is guilty of theft; for simple suspicion in the case inflicts grave injury;[5] (b) if someone from envy or hatred, without sufficient motive, voluntarily fosters suspicions concerning a grave matter; for then the sin is grave, on account of the evil affection from which it arises.

[5] A few theologians indeed deny this (in St. Alphonsus, n. 964), relying on the authority of St. Thomas, l. c., a. 3; but the holy Doctor there hands down a general rule, saying nothing about the exception; therefore his authority is alleged in vain.

372. (B) In relation to the mode of conducting oneself with respect to the neighbor: (a) we are not indeed bound, when there is reason for doubting whether the neighbor's actions are to be taken in a good or in an evil part, always to bring a judgment favoring the neighbor; but it is licit to abstain from judging.[1] (b) In the external mode of acting, we are by no means prohibited from applying precautions for guarding against our own or another's damage, just as if the neighbor were wicked; thus it is licit to lock money in a chest, lest it be stolen by servants or unknown guests; for since among men who are judged upright there are some who are in reality wicked, he acts prudently who uses precautions of this kind, without nevertheless doubting without reason concerning the probity of this or that individual.

[1] Yet charity counsels that, insofar as this can be done, we understand the actions of the neighbor in the better part; charity is kind, and does not think evil. I Cor., XIII, 4. - Faber discusses Christian kindness at length, *Spiritual Conferences*, on kindness, in French *Confer. spirituelles, Bonte*.

373. (C) All rash judgments, whatever the object concerning which they turn, are of the same moral species, because they violate the same right; therefore it is not necessary in confession to set forth the object of the rash judgment, but it suffices to declare whether the matter is grave or not.

§ II. On Detraction, or Defamation.

Notion and species.

[2] St. Thomas, 2. 2., q. 73; Sotus, lib. V, quaest. 10; Lugo, disp. XIV, n. 34-134; Sayrus, lib. XI, cap. 3 and lib. XII, cap. 6; Billuart, diss. XV, art. 2; St. Alphonsus, n. 966-982; Carriere, n. 898-922 and 961-963; Martinet, lib. IV, art. 14, § 3-6; Lehmkuhl, n. 1175-1184; Ball. P., n. 1067-1102; Noldin, n. 633-642.

Malice and gravity.

On the licit manifestation of hidden vices.

On the sin of those hearing detraction.

Scholion on whispering.

I. Notion and Species.

374. (A) Reputation is injured not only internally by rash judgment, but also externally, by words or by other equivalent signs, through detraction, which is also called defamation. This indeed in a general way is the unjust blackening of the neighbor's reputation.[3] - But this can be done in two ways: through simple detraction (in French *medisance*), which is the unjust injury of another's reputation by manifesting without cause a true but hidden vice; - through calumny (*calomnie*), which is the unjust injury of another's reputation by imputing to another a false crime or defect. - Therefore calumny adds to simple detraction a lie, and indeed a pernicious one.

[3] Some in the definition of detraction add the word hidden, so that it may thus be distinguished from contumely, which is done in the presence of the one defamed; nevertheless we abstain from this word, because detraction brought forth in the presence of the defamed person and of others does not cease to be defamation, but is detraction joined with contumely. - But the essential distinction between defamation and contumely is situated in this, that the former injures reputation, the latter honor.

375. (B) Defamation can be done in various ways, which are expressed in these verses:

Imputing, increasing, manifesting, turning into evil,

He who denies or diminishes, is silent, or praises remissly.

That we may explain the matter psychologically, these are the various grades of detraction: (a) The detractor praises remissly and coldly, declaring that praises brought forward by others are either wholly or partly undeserved; (b) he is silent, that is, he says nothing, or positively says "let there be speech of something else," when there is question of the endowments of the neighbor, and the silence imports a certain denial; (c) he diminishes, namely he somewhat attenuates the qualities of the neighbor, saying, e.g., that he is not as pious, honest, or distinguished as many think; (d) he denies the endowments of the neighbor acknowledged by others; (e) he turns into evil, that is, he attributes harmless or even good deeds to ambition, vanity, avarice, and other vices; (f) manifesting, or uncovering hidden offenses or vices; (g) increasing, that is, amplifying offenses; e.g., if someone has once been drunk, he is declared a drunkard; (h) imputing, falsely attributing to someone a vice from which he is free. - These last two pertain to calumny, and often also turning into evil; the rest are referred to simple detraction. But the transition from one grade to another is easily made.

The worst kind is reticence expressed by these or similar words: "There are other deeds of his, concerning which it is better to be silent! - These things certainly are excellent; would that he had

always shown himself such! But what good is there in recalling past things? - There are indeed many other things which I could report; but charity prohibits this, etc." These indeed, if they lack foundation, are referred to calumny properly; but if they rest upon true but hidden facts, they pertain to detraction, yet by their generality they approach calumny, because they suggest worse things.

376. (C) On the part of malice, there is a great difference between defamation which is done directly from the intention of injuring reputation, and that which is done from levity and talkativeness, without the intention of harming the neighbor. - Yet those who, from an itch for speaking, often defame the neighbor (and among these there are not a few pious persons!), must be carefully warned to place a guard of circumstance upon their lips.

II. On the Malice and Gravity of Detraction.

377. 1. Principle: Simple detraction and calumny, which are done from the intention of injuring the reputation of the neighbor, are from their kind mortal sins against justice.

It is proved. (A) For from what has been said each one has a strict right to his own reputation; now that right is injured by defamation; this is clear when there is question of calumny, which, by imputing a false crime or defect, deprives the innocent man of the reputation owed to him; it is also clear as regards detraction, for as long as an offense remains hidden, the offender retains the right to reputation among others (unless a grave reason stands in the way, as will be explained below), and therefore he is deprived of his right when his hidden vices are manifested without reason. - Nor may it be said that truth has its rights, and demands that hidden offenses be uncovered; for it belongs to God, as supreme judge, to illuminate the hidden things of darkness and to manifest the secrets of hearts at the opportune time; but he who by private authority, without sufficient reason, uncovers the hidden vices of others usurps the rights of God, who is the sole judge of the living and the dead; and also harms the good of society; for if it were licit for all to bring the hidden basenesses of the neighbor into the light, contentions, quarrels, envies, and jealousies would arise on every side; the peace and tranquility of families would be gravely disturbed. Therefore defamation is unjust, and indeed of itself gravely, since it injures reputation, which of itself is more precious than gold.

378. (B) Scripture not rarely reproves detractors as hateful to God and men, and assimilates them to sinners who are excluded from the kingdom of heaven; thus it is said: "The detractor is an abomination of men";[1] - Paul, describing the pagans, depicts them as "filled with all iniquity... whisperers, detractors, hateful to God,"[2] as if by all these vices they had been made hateful to God; elsewhere he teaches that revilers are excluded from the kingdom of God.[3]

[1] Prov., XXIV, 9.

[2] Rom., I, 29-30.

[3] I Cor., VI, 10.

379. (C) Likewise the Fathers many times condemn that vice as truly diabolical;[4] St. Augustine, in order to keep his guests away from this vice, had written on his table:[5]

[4] For their testimonies see in Buseus, *Panarium*, word *Detractio*.

[5] In Possidius, *Vita S. Augustini*, in Migne, P. L., XXXII, 52.

"Whoever loves by words to gnaw at the life of the absent

Let him know that this table is forbidden to him."

Especially let these words of St. Bernard be noted, which set forth the threefold malice of detraction: "Is not the tongue of the detractor a viper? Very fierce indeed: namely, one which so lethally infects three with one breath"; namely, as he explains below, the detractor kills himself, - the hearer - and him against whom he detracts.[1]

[1] Serm. XVII, *De Diversis*, n. 4-5.

380. 2. Rules for judging the gravity of detraction. The sin of defamation, which is grave from its kind, can be venial under a twofold head: from inadvertence of mind, which attends little to the damage of the neighbor, and from lightness of matter, concerning which especially we must treat. Now the general principle is that the gravity of the sin is to be taken from the gravity of the damage which the injured person suffers in reputation. But the gravity of the damage ought to be considered not only in itself, but also in relation to the person injured, to the condition of the one detracting, to the number and quality of the hearers. Therefore attention must be paid:

381. (A) To the defect which is manifested; thus detraction in those things which pertain to honesty of life is much graver than that which turns upon natural defects of soul and body, both because these do not notably diminish reputation, and because they more easily become or can become public knowledge; whence generally the former defamation is grave, but the latter light. Yet if the natural defect is very disgraceful, and brings great sadness to the one injured (e.g., if it is said of a distinguished man that he is illegitimate), the sin can be mortal. - Likewise to call someone in general proud, irascible, lazy, etc., is not as grave as to narrate particular facts from which these defects are actually manifested; for general propensities denote natural inclination more than personal fault. - Thus also it is not mortal to report concerning him who has already been defamed by some sin something connected with that offense, e.g., to say of a husband who is known as a drunkard that he quarreled with his wife; otherwise, if the fact is altogether dissimilar, e.g., if it is said that a priest who has already lost reputation in doctrine is depraved in morals; for he who has lost reputation in one matter has not for that reason lost the same in a matter wholly dissimilar.

382. (B) To the person injured, and to his condition and dignity; for he who enjoys an intact reputation necessary to him for exercising an office or business suffers graver damage than another who neither enjoys nor needs an intact reputation.[2] Likewise the gravity of the defect which is manifested depends much on the condition of the person; thus an accusation against chastity harms a priest more than a layman, a girl more than a soldier; on the contrary, an insinuation of cowardice brings greater detriment to a soldier than to a girl; to say that a merchant is dishonest, that a physician is ignorant, harms these especially, not only as regards reputation itself, but also as regards the profit which they can make. - To detract concerning the dead, whether by words or writings, although less damaging than concerning the living, nevertheless is unjust, because they have not lost the right to reputation, and on the other

hand something of disgrace redounds from this upon the family; hence historians who, shortly after the death of some man, narrate his life, ought to take care not to injure the reputation of the deceased or of his family.[1] - It is not licit to detract concerning some family or community, because the disgrace redounds upon the whole community, e.g., if someone were to say that in such a monastery certain religious indulge in such or such a vice; otherwise, if it were said in a general way that in monasteries there are not lacking those who sin gravely, although this mode of speaking is to be avoided before those who can suffer scandal from it.

[2] It is not licit to reveal the hidden sin of the neighbor, while adding at the same time that penance for it was performed, because, even with this correction, his reputation is injured.

[1] But if they write long after his death, they can reveal even hidden vices, by reason of the public good, so that men may be deterred from vices; hence even a little after his death they can collect documents in which these offenses are narrated, so that memory of them may exist. - Cf. Baller. P., n. 1097; Noldin, n. 642.

383. (C) To the person of the detractor; since a man who is regarded as grave, prudent, and truthful harms more than one who is light, talkative, and lying; likewise if someone affirms something as certain from sight, he inflicts greater damage than if he reports the same as heard from persons of uncertain authority. Yet if someone narrates a grave matter as heard from a person worthy of faith, or if he foresees from the circumstances that the hearers will believe it, he can commit a grave sin.

He who narrates a hidden crime, without naming the person guilty of this sin, indeed does not sin against justice, if he knows that the hearers cannot know this person; otherwise, if he foresees that the same can easily be known.

384. (D) To the number and quality of the hearers; for, other things being equal, detraction brought forth before many is worse than in the ear of one, - before talkative persons who will preach the matter over the roofs than before men tenacious of secrecy.

On this occasion theologians ask whether he sins gravely who, without malice, manifests a grave defect of the neighbor to one prudent man, who is not going to divulge the matter. Now if this is done from a reasonable cause, for seeking counsel or consolation, it certainly is not a grave sin. But if it is done without cause, it is controverted: some say, with Cajetan,[2] that the damage is not notable, because reputation is lost before one only; others assert, with Lugo,[3] that the damage is notable, precisely because reputation is lost before a grave man, concerning whose good estimation men especially care; and indeed this reason is not lacking in solidity. - In practice, those who act thus are not to be disturbed, but they are to be exhorted to abstain from manifesting the defects of the neighbor when no reason is present.[1]

[2] Commentary on q. 73, art. 2.

[3] Lugo, l. c., n. 51-52.

[1] You will find the French laws concerning calumny and defamation in the Supplement, n. 72.

385. A point to be noted for practice. Detraction and calumny are sins specifically diverse, insofar as calumny, besides detraction, contains a lie. Some say that this malice, as against truthfulness, is not mortal, and therefore does not have to be declared necessarily in confession.[2] - Yet this

does not seem consonant with right reason; for the lie in question is pernicious, and therefore grave, if the matter itself is grave.

[2] Thus Noldin, n. 637, who nevertheless adds: "Yet for the most part the confessor ought to know this, both so that the gravity of the sin and so that the mode of restitution can be determined."

But detractions in diverse matters, e.g., to say that someone is a robber, a liar, or a drunkard, are more probably not sins diverse in species, since they injure reputation in the same mode, if not in the same degree; therefore the confessor is not bound to inquire concerning the very matter of detraction, except insofar as this is necessary for judging whether the defamation is grave or not.

III. On the Licit Manifestation of Hidden Vices.

386. 1. Principle. From what has been said, it is never licit to calumniate; indeed generally it is illicit to uncover the hidden defects of the neighbor; but, when a proportionately grave reason is added, this can be licit; for the obligation of keeping silent about the defects of others ceases when their revelation is demanded by the public or private good, proportionate to the damage which follows from the manifestation itself, provided the intention is held not of harming, but of obtaining a good effect; for the manifestation of a vice which really exists is not of itself something intrinsically evil, and therefore can be permitted from a proportionately grave reason.

Now a sufficient motive can be:

387. (A) The public good, namely when the revelation of the offense is necessary for impeding an evil which threatens society or the community; for it is better to avert such damage than to preserve the reputation of a harmful person. Thus, if there is question of conferring an office upon someone unworthy or incapable, it is licit to uncover his hidden vices to the superior, when these are going to harm the whole community; newspaper writers can uncover the vices of candidates who seek public dignities or offices, as often as this knowledge contributes to the public good; if any secretly teach a very bad doctrine, from which faith or morals are corrupted, they must be denounced to superiors.

388. (B) Private good: (a) of the offender himself, as often as it cannot be procured without injury to his reputation, e.g., when children or subjects cannot be corrected unless their secret vices are manifested to parents or superiors; when someone cannot be kept away from an invalid marriage without manifestation of a hidden impediment. - Many also teach that this is licit for obtaining the prayers of the pious for the amendment of the offender; yet this must be done only prudently and with a right intention; for there are some who, under this pretext, but in reality from an itch for manifesting the vices of others, say to many: "pray for such a person, who greatly needs prayers, because..."; and this often is nothing other than open detraction or calumny veiled by hypocrisy.

(b) The good of the one revealing, when someone, for the sake of consolation or counsel, narrates to a friend injuries inflicted upon himself, even if thus another's hidden vice is uncovered; or uncovers to a judge the hidden crime of an accuser, in order to destroy the force of his testimony; for we can prefer our own good to the good of the neighbor.

389. (c) Also the private good of the neighbor; namely, when innocents can easily be deceived and seduced by the wicked, it is often expedient to manifest the secret offenses of these, so that the temporal or spiritual ruin of the unwary may more easily and efficaciously be averted; for the good of the innocent must be preferred to the reputation of the guilty. - Therefore if inquiry is made concerning the honesty of some servant, concerning the skill of a certain physician, etc., it is licit to disclose the truth, yet prudently and while observing the laws of charity.

In all these cases, revelation ought to be made with the least damage to the guilty person, - namely by manifesting only that which is truly useful for averting the evil, and only to those for whom the matter can be useful. - But it is never licit to impute what is false to someone in order to avoid one's own damage or that of others: for this would be a pernicious lie; therefore deservedly the following propositions (43-44) were condemned by Innocent XI, March 2, 1679, as scandalous and pernicious in practice: "Why should it be anything but venial to destroy the great authority of one detracting from oneself by a false crime? - It is probable that he does not sin mortally who imputes a false crime to someone, in order to defend his own justice and honor."[1]

[1] In Denzinger, n. 1060-1061.

Hence more probably it is not licit to manifest a hidden crime when knowledge of it has been acquired unjustly (e.g., by unjustly reading another's letters), even for defending oneself.[1] For the public good demands that fraud and injustice be able to patronize no one; therefore if someone has known another's secret by truly unjust means, the common good demands that he cannot use it. But otherwise it would have to be said if someone had the right of examining private letters, according to the rules to be set forth below.

[1] Thus Lugo, disp. XIV, n. 100-108.

390. 2. Corollary: on the manifestation of a public crime. When a crime is public, generally it is licit to manifest it without injustice even to those who are ignorant of it, because the right to reputation has been lost. Yet, so that the matter may be determined more accurately, certain distinctions are necessary.

(A) When an offense is public by notoriety of law, that is, by force of "a judicial sentence publicly promulgated,"[2] it can be manifested, even without cause, in the region where it has been denounced, unless it has been amended and already destroyed by oblivion; for the judge by a legitimate sentence deprived the offender of the right to reputation, at least in this matter; and, by promulgating this sentence, gave to others license to divulge the offense, so that citizens may more easily beware of criminal men. - Yet I said in the region where the sentence has been promulgated; for if the offender has gone away into a distant region, and there harms no one, charity at least can demand that his crime not be revealed, lest otherwise he come into despair. I likewise said unless it has been amended and already destroyed by oblivion; for if, even in the region where the sentence was made public knowledge, the offender has amended himself and enjoys a good reputation, it would be against charity, and perhaps against justice, to recall the memory of the past and expiated crime, and to deprive the guilty man, now amended, of his restored reputation.

[2] There is question of a sentence which passed into a judged matter, or of the confession of the offender made in judgment, according to the norm of the Code, c. 1750 and 2197, 2.

391. (B) But if the fact is public only by notoriety of fact, insofar, namely, as it is publicly known and cannot be concealed by any evasion,[3] it can be manifested unless it has been amended and destroyed by oblivion. - For, even if no judicial sentence has intervened, the public good demands that criminal men, who have offended not once but several times and can inflict damage upon others, become known to all. - But if the offender is truly amended, and therefore by no means harmful to society, and otherwise his offense has been destroyed by oblivion, he who recalls the memory of this offense certainly sins against charity, and more probably against justice; for the offender, who had lost the right to reputation by a public offense, recovered it by amendment of life.

[3] Code, can. 2197, 3.

392. (C) If the crime is public by notoriety of fact in one place, more probably it is not licit, whether from charity or from justice, to divulge it in another distant place, unless it is foreseen that the same will shortly be public in that place, or it is feared lest the offender harm others in that place. The reason of the general rule is that the offender has not lost the right to reputation in that remote region; but if reputation is going to be lost within a short time, it can morally be held as already lost; on the other hand, if the guilty man is harmful to others, on account of the public good it is expedient that he be denounced. - Even when the neighbor has lost the right to reputation, to narrate his offenses from an itch for speaking wittily is often a venial sin against charity, as being very unpleasant to the neighbor.

IV. On Those Hearing Detraction.

Among those hearing detraction, some induce the detractor to blacken the neighbor, others voluntarily rejoice concerning it, others merely do not impede the detraction.

393. 1. Those who induce others to detract, by inquiring concerning the defects of the neighbor, or by praising him in such a way that they move others to detraction, or by approving their narration, sin in the same way as those detracting themselves, not only against charity, but also against justice; for formally they cooperate with an unjust action; besides, they give scandal, by provoking others to sin.

2. Those who voluntarily rejoice concerning detraction, without nevertheless formally cooperating with it, sin against charity, because they rejoice concerning the evil of the neighbor; gravely, if they do this from hatred, envy, or revenge, or another motive of this kind, and otherwise the matter is grave; venially, if from curiosity, or from the mode of narrating, or from another lightly sinful motive.

394. 3. He who neither approves detraction, nor rejoices concerning it, but only does not impede it, sins against charity, unless he is excused by some reason, - both because he does not avert evil from the defamed person, and because he does not impede the sin of the detractor; but he does not injure justice, because he is not bound from justice to avert that twofold evil.

That obligation of impeding detraction chiefly lies upon superiors; since the superior of the one defaming ought to correct the detractor, and the superior of the one defamed ought to avert the evil of his subject; whence, other things being equal, superiors sin more gravely in this case than subjects or equals; yet not against justice, because by force of their office they ought to watch over the spiritual, not the temporal, good of subjects, and therefore they are not bound from strict justice to impede their defamation.

It was said unless he is excused by some reason; for there are those who do not sin even venially by not impeding detraction: (a) because they prudently foresee that every correction will be useless or even harmful, e.g., because the detractor is thereby stirred up to increase the detraction; (b) because a grave inconvenience is feared, e.g., quarrels, insults; (c) or because he does not dare to say anything, on account of reasonable shame.

In practice, nevertheless, one ought or at least it is expedient to manifest a certain displeasure, if possible, whether by departing, or especially by diverting the conversation to other things, as soon as the opportunity presents itself.

Scholion on Whispering.

395. Whispering (in French *rapport, delation*) is the manifestation of some saying or deed of another for disturbing peace and friendship among families or friends. Therefore it differs from detraction by reason of the end, because properly it intends not the blackening of the neighbor, but the sowing of discord; nevertheless it generally involves detraction or calumny, and therefore contains a twofold malice. - Whisperers in Scripture are called double-tongued, because they often use a double mode of speaking, conversing in one way before one person, in another way before another, so that they may more efficaciously sow the causes of quarrels.

396. Whispering is a grave sin from its kind, directly indeed against charity, but indirectly also, at least for the most part, against justice, insofar as it involves detraction or calumny. It is a grave sin from its kind, because of itself it tends to destroy friendship, which is the greatest good, according to Scripture as witness: "A faithful friend is a strong protection: and he who has found him has found a treasure; there is no comparison to a faithful friend... a faithful friend is a medicine of life and immortality."[1] - Hence in the same place whispering is often reproved as a sin hateful to men and God, and worthy of death: "A whisperer shall defile his own soul, and in all things he shall be hated... The whisperer and the double-tongued are accursed: for he will disturb many having peace."[2] And elsewhere:[1] "Six things there are which the Lord hates, and the seventh His soul detests... him who sows discord among brothers"; wherefore, according to St. Paul,[2] whisperers are worthy of death. Therefore whispering is of itself a grave sin: "And therefore whispering is a greater sin than detraction, and also than contumely; because a friend is better than honor, and to be loved than to be honored."[3]

[1] Eccli., VI, 14-16.

[2] Eccli., XXI, 31; XXVIII, 15.

[1] Prov., VI, 16, 19.

[2] Rom., I, 29, 32.

[3] St. Thomas, 2. 2., q. 74, a. 2.

But the sin is the graver the more intimate and more necessary the friendship is which is dissolved, and the worse the effects are which can be foreseen from this; therefore if friendship is dissolved between parents and children, or between spouses, or between defenders of the Catholic faith, and from this dissensions, quarrels, and other things of this kind can be foreseen, the sin is greater.

But he does not commit whispering who dissolves by counsels or fraternal correction a harmful or dangerous friendship.

§ III. On Contumely, or Injury of Honor.

397. 1. Notion and species. Just as reputation is injured by rash judgment and defamation, so honor is injured by contumely. For honor is the external manifestation of reverence owed to the neighbor on account of his excellence; it is owed to all those who, although otherwise imperfect, are endowed with certain distinguished gifts. - To this is opposed contumely, which is the unjust injury of honor inflicted upon one present and knowing it; or at least with the intention that it become known to the one injured, whether through a messenger or through letters. Therefore it differs from detraction by reason of the object, because it directly injures honor, not reputation; by reason of the mode, because it is done to one present, while for the most part detraction is done concerning one absent. - Yet sometimes contumely is done before others, to whom a hidden offense of the offended person is manifested, and in this case it is joined with detraction.

[4] St. Thomas, 2. 2., q. 72; Soto, lib. V, quaest. 9, art. 1; Lugo, disp. XIV, n. 189-196; Sayrus, lib. XI, cap. 8; St. Alphonsus, n. 984-990; Carriere, n. 977-980; Martinet, lib. IV, art. 14, § 2; Noldin, n. 651-654.

Contumely can be inflicted positively by words or deeds which express contempt; and negatively, by omitting due honor, e.g., a greeting in circumstances in which this is owed. To contumely is referred mockery or derision, by which the defects of the neighbor are turned into laughter, to his shame and confusion; and also insult, or reproach, by which a vice is disgracefully cast before him. For the most part contumely, mockery, and insult arise from anger, or from hatred.

398. 2. Principle: Contumely is a sin mortal from its kind against justice.

For every man has a right to honor on account of the natural or supernatural gifts with which he is endowed, - for example, on account of the grace and virtues with which he is adorned, doctrine or prudence or other qualities by which he shines forth, or by reason of the duty or office committed to him; and this indeed is true even if he labors under certain defects or vices, since by these the excellent gifts with which he is furnished are not taken away. Now contumely violates that right, by despising the neighbor through words, deeds, or omission of due reverence; but this injury is of itself grave, because honor, by the common estimation of men, is placed before the goods of fortune, and therefore is held as a good of great moment; yet it can be venial from lightness of matter or imperfection of the voluntary act. Hence Scripture strictly prohibits injuries of this kind, under most grave penalties: "But he who shall say to his brother, raca, shall be guilty before the council; but he who shall say, fool, shall be guilty of the hell of fire";[1] on the contrary, it wills that Christians be

"anticipating one another with honor,"[2] and "in humility esteeming one another superior to themselves";[3] wherefore he who despises his brother is wholly opposed to the evangelical spirit.

[1] Matt., V, 22.

[2] Rom., XII, 10.

[3] Philip., II, 3.

399. 3. On the gravity of contumely. In order that judgment may be made rightly concerning the gravity of contumely or mockery, attention must especially be paid to these things:

(A) To the dignity of the person offended and the gravity of the injury; generally the more honorable the offended person is, the graver the contumely is, other things being equal; but the gravity of the injury is not taken only in itself, but in relation to the person; thus insults with which common people affect one another injure honor less than similar words held among persons of a nobler condition.

(B) To the person offending, and his dispositions; if he is endowed with authority, the offense is greater, because more care is taken of it; if he is of a more lowly condition, it is more easily held as nothing; likewise, if it arises from anger or levity, it is certainly less grave than if from hatred, envy, or contempt.

(C) To the effects going to follow from it; namely, the sin is greater if it is done before many persons, who take scandal from this; likewise if it is foreseen that quarrels, enmities, and contentions are going to arise from it.

400. Corollaries. (A) Mockery is a sin of the same species as contumely; therefore the same must be said concerning its gravity. Yet an urbane kind of joking is more easily excused from sin, if it is done by way of honorable recreation, among friends who plainly understand the matter. Nevertheless, even in these circumstances, let it be used soberly and prudently, and not for too long, lest perhaps he concerning whom there is question be made too sad or be provoked to anger.

(B) Sometimes insult and reproach are not only excused from sin, but are praiseworthy, namely when they are done cautiously and moderately by superiors or friends from the intention of correcting a subject or brother. But then let them be done with right intention, when a grave reason is present, and indeed in such a way that it can be understood that they are brought forward not from anger or passion, but from the mind of correcting and amending the offender.

§ IV. On Injury of Truth.

Truthfulness is a virtue annexed to justice, inclining the mind to saying what is true when, where, and how it is fitting. Social life requires this, since it supposes the sincerity and honesty of citizens; and sometimes justice requires it, as will be clear from what is to be said. To truthfulness are opposed chiefly false testimony and lying.

I. On False Testimony.

401. 1. Principle: False testimony is of itself a grave sin against justice.

(A) For it is directly prohibited by the eighth precept of the Decalogue: "You shall not speak false testimony against your neighbor";[1] hence false testimony is numbered among the six sins which the Lord hates;[2] and a false witness is exhibited as very harmful to the neighbor:[3] "A dart and a sword, and a sharp arrow, is the man who speaks false testimony against his neighbor."

[1] Exod., XX, 16.

[2] Prov., VI, 16, 19.

[3] Prov., XXV, 18.

402. (B) In reality false testimony, according to St. Thomas,[4] has a threefold deformity: (a) from perjury, because witnesses are not admitted unless sworn, and therefore they offend religion by violating the oath, and under this head they always sin gravely;[5] (b) from violation of justice; for he who is legitimately questioned before magistrates is bound to speaking the truth not only from legal obedience, but also from commutative justice, since otherwise he can be an unjust cause why an innocent person is condemned; and under this head the sin is grave from its kind, against justice, and obliges to restitution as often as it was an efficacious cause of damage, from the principles to be set forth below concerning the unjust damager; (c) from the lie itself; for denial of owed truth is a sin against truthfulness, and indeed a pernicious one, which therefore will be mortal if the matter is grave. - Deservedly, therefore, canon law reproves an offense of this kind in these words: "A lying witness is harmful to three persons: first to God, whose presence he despises; then to the judge, whom he deceives by lying; lastly to the innocent person, whom he injures by false testimony."[1]

[4] St. Thomas, 2. 2., q. 70, a. 4.

[5] Today nevertheless in certain regions an oath is no longer exacted.

[1] *Decretal.*, lib. V, tit. XX, c. 1, p. 816-817, ed. Friedberg. - Cf. *Cod. p. gal.*, a. 316-366; Supplement, p. 71*.

403. 2. Corollaries. (A) Per accidens false testimony can be a venial sin: (a) from lightness of matter, if only light harm is inflicted upon the neighbor, and otherwise an oath is not exacted; yet this rarely occurs in a judicial matter; (b) from defect of sufficient advertence; the witness indeed ought to be cautious, and to think seriously before he renders testimony, since there is question of a matter altogether grave; nor ought he to assert as certain that concerning which he is not certain, but he ought to bring forth doubt under doubt. "But because it happens from the instability of human memory that a man sometimes thinks himself to be certain about that which is false, if someone, reconsidering with due solicitude, judges himself to be certain about that which is false, he does not sin mortally by asserting this: because he does not say false testimony in itself and from intention, but per accidens against that which he intends."[2]

[2] St. Thomas, l. c., ad 1.

(B) He who knowingly and willingly brought forth false testimony, by cooperating efficaciously toward the condemnation of an innocent person, is bound from justice to repair the damage inflicted, with equal or greater[3] inconvenience to himself, even with retraction of the testimony brought forth, if this is necessary and efficacious. - But concerning him who erred inculpably, or at least did not

cooperate efficaciously toward inflicting damage, - because, e.g., with the testimony of others already given, the matter could have been held as finished, judgment must be made according to the principles to be set forth below where Restitution is treated.

[3] If his own damage were much greater, in certain circumstances he could be excused from restitution or retraction, as will be explained below.

II. On Lying.

404. Preliminary note. A lie is speech against the mind, expressed by words or by other exterior signs.

[1] St. Augustine, *De Mendacio*, one book; *Contra Mendacium*, one book; Migne, P. L., XL, 487-548; St. Thomas, 2. 2., q. 110-111; Lessius, lib. II, cap. 47, dub. 6; J. Barnes, O. S. B., *Dissertatio contra aequivocationes*, Paris, 1625; Th. Raynaudus, S. J., *De aequivocatione et mentali restrictione*, among his works, Lyons, 1565, t. XIV, p. 71, 232; L. Thomassin, *Traite de la Verite et du Mensonge*, Paris, 1691; St. Alphonsus, n. 151-171; Carriere, n. 923-960; Bolgeni, in *Melanges theologiques de Liege*, 4th series, 1850-1851, p. 406-413; *Examen de l'opinion de Bolgeni*, in *Melanges*, 6th series, 1852-53, p. 410-462; Waffelaert, *Dissertation morale sur la malice du mensonge*, Tournai, 1884; F. Bouillier, *Questions de Morale pratique*, Paris, 1889, p. 249-359; *Ami du Clerge*, XVIII, 1896, p. 561-572; Dubois, *Une Theorie du mensonge*, in *Science catholique*, Sept. 1897; *Etude sur la malice intrinseque du mensonge*, by a professor of Theology, Paris, 1899; *Du mensonge proprement dit*, by a Professor of Theology, Paris, 1903.

If it is done solely for the sake of joking, it is called jocose; if for one's own or another's utility, it is called officious; but when it is brought forth in order to inflict damage unjustly upon someone, it is named pernicious. - To lying are recalled simulation, by which by deed or external sign the neighbor is induced into error; and also hypocrisy, which covers internal wickedness with the external appearance of virtue; boasting, by which someone by praising himself or his own passes beyond the limits of truth; flattery, which extols another beyond the limits of truth, with the mind of blandishment.

Since there have been various opinions concerning the essence and intrinsic malice of lying, we shall set forth the matter historically, in order to deduce practical conclusions from it.

1. The Common Doctrine Concerning the Intrinsic Malice of Lying Is Set Forth.

405. (A) Doctrine of St. Augustine. Before Augustine, the Fathers in a general way reproved lying as contrary to Christian truthfulness;[2] yet a few, such as Clement of Alexandria, Origen, St. Chrysostom, and St. Hilary, had taught that in a case of necessity, for averting the greatest damage, it is licit to use a lie just as a medicine; and in this sense they understood certain deeds related in each Testament.[1] Being questioned concerning this matter, St. Augustine set forth his doctrine in two works, *De Mendacio* (around the year 365), and *Contra Mendacium* (around the year 420); in both he openly teaches, - not indeed as Catholic doctrine, but as an opinion to which he firmly adheres, - that every lie is a sin, and that one must never lie: (a) not for the temporal salvation of anyone whatever, since the life of the soul is more powerful than bodily life;[2] (b) nor for preserving purity or avoiding defilement, since purity of the soul excels the integrity of the body;[3] (c) nor for the eternal salvation of another: for just as, in danger of eternal salvation, it is not licit to aid a man through defilement, so neither through a lie, which truly is a sin;[4] therefore it is not licit to deceive the guards of a prison in order to baptize a

man; nor can Catholics falsely say that they are Priscillianists, in order that they may know the secrets of these.[5]

[2] Thomassin, op. cit., p. 75-107; 129-189, sets forth their doctrine excellently.

[1] See the testimonies in Thomassin, l. c., and T. Raynaudus, op. cit., p. 143-149.

[2] In Migne, XL, 494, 541-545.

[3] Ibid., 496-497.

[4] Ibid., 546-547.

[5] The book *Contra Mendacium* was directly written so that Catholics might be deterred from using a lie to uncover hidden Priscillianists. - Migne, l. c., p. 517.

406. But since not a few texts of the Scriptures were opposed by adversaries for defending lying, he handed down that these are to be explained in a threefold way: (a) let it be shown that the deeds alleged, if rightly understood, are not lies: thus the manner of acting of Jacob, who seems to deceive his father, is not a lie, but a mystery;[6] (b) but if they are lies, they are not to be imitated; (c) or at least concerning those matters which pertain to the doctrine of religion, one must in no way lie.[7]

[6] Ibid., 533.

[7] Ibid., 535.

Concerning equivocation and mental restriction he is entirely silent, and he seems by the whole mode of arguing to exclude them.

But the reasons why, according to Augustine, lies are utterly and always illicit are: (a) the authority of the Scriptures, especially of the Apostle saying:[8] "Putting away lying, speak truth each one with his neighbor, because we are members one of another"; where the word neighbor designates all, even heretics;[9] (b) the intrinsic malice of lying, which is no less an evil than adultery;[10] (c) the depraved consequences to follow from this; since indeed faith is not had in other matters toward one who lies in one.[11]

[8] Ephes., IV, 25.

[9] In Migne, l. c., p. 527.

[10] Ibid., 527-528 and passim.

[11] Ibid., 523.

Yet since he knows that there are some defenders of lying, he says: "At least in the worship of God let them concede that one must not lie... concerning the other kinds of lies, let him who is pleased that lying is to be done choose for himself what he thinks to be the mildest and most innocent kind of lying."[1]

[1] Ibid., 544.

407. (B) Doctrine of St. Thomas. Most Fathers embraced the opinion of St. Augustine, with a few nevertheless excepted, who, with Cassian,[2] held that lying can be applied as it were as hellebore, in a case of necessity, for averting an imminent evil. St. Thomas polished the

Augustinian doctrine, (a) by defining the conditions required for a lie properly so called: "Therefore if these three concur, namely that what is enunciated is false, and that the will to enunciate the false is present, and again the intention of deceiving, then there is falsity materially, because what is false is said, - and formally because of the will of saying what is false, - and effectively because of the will of imprinting falsity."[3] (b) Afterward he establishes that every lie is a sin, because it is evil according to itself: for it is against nature that someone by voice signify that which he does not have in mind.[4] (c) The sin is grave when the lie turns upon divine matters, that is, faith or religion, or inflicts grave damage upon the neighbor; - but it is venial if light harm is inflicted, or if the lie is officious or jocose.[5]

[2] "And so one must think of a lie, and use it so, as if the nature of hellebore were in it; if it is taken when a deadly disease is imminent, it becomes healthful; otherwise, when taken without necessity of the greatest danger, it belongs to present destruction... Therefore when some grave danger threatens from the confession of truth, then the refuges of lies are to be received, yet in such a way that we are healthfully bitten by the guilt of a humble conscience." (*Collat*. XVII, cap. 17, in Migne, XLIX, 1062-1063.)

[3] St. Thomas, 2. 2., q. 110, a. 1. Yet he adds that the intention of deceiving does not pertain to the essence of a lie, but to a certain perfection of it.

[4] Ibid., a. 4.

[5] Ibid., a. 3.

408. (C) The theory of moralists concerning equivocation and mental restriction. Up to this point nothing had been said concerning equivocation or mental restriction; yet soon theologians understood that in certain circumstances, in order to avoid a greater evil, truth can be hidden under the appearance of equivocation. This, already before implicitly proposed, Lessius and Parsons more directly set forth and defended;[6] but J. Barnes and Thomassin (op. cit.) attacked their opinion; Th. Raynaudus, op. cit., strove with all strength to vindicate the doctrine of Lessius; and, although some theologians, such as Caramuel,[1] held the same as very dangerous, nevertheless this became common in the schools.

[6] Lessius, in the book *de Antichristo*, § 31; *de Justitia*, lib. II, cap. 11, dub. 20, and cap. 42, dub. 9, and also cap. 47, dub. 6; Parsons, *Tr. de Aequivocatione*.

[1] *Theologia Fundamentalis*, Frankfurt, 1652, Fundam. LXII, p. 639.

Yet certain theologians proceeded further in this matter, whose propositions Innocent XI condemned as scandalous and pernicious in practice on March 2, 1679 (n. 24-28):

24. "To call God as witness of a light lie is not such irreverence on account of which He would will or could damn a man.

25. "With cause it is licit to swear without the mind of swearing, whether the matter is light or grave.

26. "If someone, either alone or before others, whether questioned, or of his own accord, or for the sake of recreation, or for any other end whatever, swears that he did not do something which in reality he did, by understanding within himself something which he did not do, or another way from that in which he did it, or any other true addition, in reality he does not lie, nor is he perjured.[2]

[2] From this it is clear that this and the following propositions are condemned because in these there is question of purely mental restriction, which cannot be understood even by a prudent man, and indeed confirmed by oath.

27. "A just cause of using these amphibologies is as often as this is necessary or useful for protecting the health of the body, honor, family affairs, or for any other act of virtue, so that the concealment of truth is then judged expedient and studious.

28. "He who by means of recommendation or gift has been promoted to a magistracy or public office will be able with mental restriction to render the oath which by mandate of the king is customarily exacted from similar persons, without respect being had to the intention of the one exacting: because he is not bound to confess a hidden crime."

409. With these excesses set aside, the theory concerning equivocation and mental restriction is proposed today in this way. Equivocation is a word or other sign which, from its nature and the common use of men, is not determined to signify one thing, but can signify several.[3] Mental restriction is an act of the mind, by which the words of the speaker, through something which is retained in the mind, are determined to another sense than the natural and obvious one; if the sense of the speaker can in no way be perceived, the restriction is purely or strictly mental;[4] but if it can be understood from the context or from the circumstances, the restriction is called broadly mental.[1]

[3] Thus when Christ said: "Lazarus our friend sleeps" (John XI, 11), these words could be understood of sleep or of death.

[4] Thus if to one asking "whether you have seen Rome," you answer affirmatively, understanding in a picture.

[1] If someone, questioned about a secret which he ought to conceal, responds, I do not know.

Now, for the legitimate use of equivocation or mental restriction, two conditions are required together: (a) that the true sense can be discovered by a prudent man from the context or from the circumstances; (b) that a proportionately grave cause be present; for since deception is a certain evil, it is not licit without reason to give another an occasion of deception; on the other hand, the nearer this occasion is, and the graver the error to which another is exposed, the greater cause is required.

2. The Theory of More Recent Authors Concerning Lying Is Set Forth.

410. Yet this theory concerning mental restriction by no means pleased many recent philosophers, who contended that, with it admitted, no one is now certain in what part the words of another ought to be taken; since, on the other hand, there are not lacking cases in which it is necessary to say what is false in order to avoid a greater evil, they tried to mitigate the rigor of the Augustinian theory and to accommodate it to human weakness. Namely, they say that a lie properly so called is illicit, which is repugnant to the right or good of others; but in a case of necessity a false-saying (*faussete*) is licit, by which what is false is indeed enunciated, but only when truth is not owed to others, and on the other hand these suffer no damage from the assertion of what is false. Thus especially Grotius and Pufendorf.[2] Most Protestant theologians,[3] not a few Rationalists, and certain Catholics[4] assented to these. - A lie properly so called indeed is always illicit, they say, because it violates the right which someone has to knowing the truth; but false-saying does not injure the neighbor's right, since by hypothesis

truth is not owed to him; nevertheless it cannot be applied without reason, since speech of itself was instituted for saying what is true.

[2] Grotius, *De jure belli ac pacis*, lib. III, c. 1, § 10-21; Pufendorf, *De jure nat.*, l. IV, c. 1.

[3] Thus among others Taylor, Milton, Paley, Johnson, whom Newman cites, *Apologia pro vita sua*, 5th ed., Appendix, p. 378-384; de Wette, *Christl. Sittenlehre*, III, 126; Martensen, *Die christl. Ethik*, 1879, t. II, p. 245 sq.; Dorner, *Christian Ethics*, New York, 1887, p. 489-492; N. Smyth, New York, 1892, p. 392-400.

[4] Bolgeni, *Il possesso*, c. 48; author of the article in *Melanges theol.*, l. c.; Piat, in Appendix IV to *Theologia Moralis* by Van der Velden, Tournai, 1875, t. I, p. 524-533; Dubois, l. c.; author of the little work *Etude sur la malice intrinseque du Mensonge*; Fonsegrive, *Elements de Philosophie*, t. II, p. 475.

3. Conclusions To Be Deduced from This Controversy.

411. (A) A lie properly so called, or the denial of owed truth, is intrinsically evil and a sin grave of itself.

(a) For as often as truth is owed to someone, whether from justice, or from obedience, charity, or another virtue, the neighbor through a lie is deprived of truth to which he has a right, and therefore incurs damage grave from its nature; for truth is the essential good of the intellect, just as virtue is the good of the will; and if someone is deceived in a grave matter, by that very fact he suffers grave harm. - Moreover, once the liceity of lying is admitted, the security of social life is now overthrown; for this consists in mutual confidence; now if, when truth is owed to the neighbor, it is licit to say what is false, confidence vanishes and suspicions disturb security on every side.

(b) Deservedly, therefore, Scripture prohibits and rebukes lying: "You shall not lie, nor shall each deceive his neighbor";[1] - "You will destroy all who speak a lie";[2] - "The just man will detest a lying word";[3] - "Do not plow a lie against your brother, nor do likewise against a friend; do not will to lie every lie: for its assiduity is not good";[4] - "Putting away lying, speak truth each one with his neighbor, because we are members one of another."[5]

[1] Levit., XIX, 11.

[2] Ps., V, 7.

[3] Prov., XIII, 5.

[4] Eccli., VII, 13-14.

[5] Ephes., IV, 25.

412. Hence when someone is bound from office to announce the truth, as a preacher of the Gospel; or is legitimately questioned by superiors or judges;[6] or if there is question of entering into pacts or contracts, - it is never licit to use equivocations or false-saying by which the neighbor can be induced into error.

[6] In certain regions, one who is accused of a crime can legally declare himself guilty or not (*to plead guilty or not guilty*); in this case he is not bound to confess the crime committed by himself, but can wait until he is judicially proved guilty; but if as a witness he wishes to appear in his own cause (*in the witness-box*, as they say) he is bound to manifest the truth.

413. (B) Even when truth is not owed to the neighbor, lying is illicit outside the case of necessity, but only under light sin.

For since error is an evil of the intellect, it is not licit to induce the neighbor into error, unless grave necessity excuses this. - Besides, since speech by its nature is the expression of the mind, he who deliberately and without grave reason asserts something false acts voluntarily against the natural order of things and against his own dignity. - Under light sin, from the common sense of the faithful.

414. (C) But in a case of necessity, when grave damage, whether temporal or spiritual, is foreseen as going to arise from open declaration of the truth, it is licit to use these words or signs which induce the neighbor into error, if the damage cannot otherwise be averted. But this mode of speaking is commonly called mental restriction by theologians, false-saying (*faussete*) by moderns, or a psychological lie.[1]

[1] Therefore those are little consistent with themselves who on the one hand reprove the moderate use of mental restriction, and on the other approve false-saying in many cases; let them deservedly blame the abuse of equivocations, but not condemn the use, unless, with Augustine and Kant, they altogether exclude every assertion of what is false. Nor likewise are theologians consistent with themselves who do not hesitate to assert that, even in a case of necessity, any false-saying whatever is intrinsically illicit, and on the other hand permit the use of certain restrictions which by all upright persons ignorant of theological distinctions are held as lies or false-sayings. Wherefore Genicot says (n. 416): "For it is not an inconvenience if the unlearned call those things licit lies which are more commonly called broadly mental restrictions by Theologians." - Now today not only the unlearned, but many of those who otherwise are learned, do not understand mental restrictions, but abhor them, as is clear both from their writings and from their public speeches; therefore if the word false-saying pleases them more, one must not dispute about the name itself.

(a) For in this case the deception of the neighbor is not directly intended, but the good effect which follows from the deception, namely the legitimate defense of oneself or of others; on the other hand the neighbor in the case does not have a right to knowing the truth, and the accidental error which is caused in his mind is a lesser evil than that which would follow from the manifestation of the truth; besides, the neighbor is deceived for this reason, because he does not attend to all the circumstances. Therefore here there is question of an act good in itself, namely of the temporal or spiritual safety of the neighbor, from which nevertheless an evil effect is foreseen, namely error caused in the mind of another.

415. (b) It is certainly necessary that a practical means be at hand for all, by which secrets, otherwise necessary or very useful, may licitly be protected from an importunate and unjust investigator; now unless in a case of necessity it is licit to use equivocations or false-saying, there will be no means of this kind; for silence will betray the truth, and will bring great damage; for the manifestation of a secret is as pernicious to human intercourse as lying itself, as St. Alphonsus says, n. 152. Now no one ought to be in that condition that, whatever he chooses, he sins; therefore there ought to be a legitimate means for warding off the importunate, by inducing them into error.

Let us explain the matter by examples: if some innocent person is sought by unjust aggressors, who wish to kill him, and cannot be saved in any other way than by deceiving the unjust persecutors, is it not licit to deceive them? In this case, if they were actually attacking the innocent person, it would be licit to repel them by force, even by inflicting death; is it not a lesser evil to induce them into

accidental error? - Likewise a physician foresees that some sick person is going to die unless he is deceived; an advocate, judge, confessor, and others bound from office to preserve a secret foresee that the secret committed to them cannot be preserved by silence alone, and therefore they say, "I do not know," or "he about whom you ask by no means committed such a crime"; in this case do they not deserve better of society itself than if by keeping silent they had manifested the secret?

416. And indeed, when the use of equivocation or false-saying is circumscribed by these limits, social security is by no means endangered; for the neighbor is not deceived except when he unjustly inquires into the truth, and he ought to attribute to himself the error into which he falls.[1]

[1] We have said nothing of those modes of speaking by which the truth is politely covered, e.g., the master is not at home, so that it may be signified that he, although present, does not wish or is not able to receive anyone; these and other similar things are easily understood and cannot be held as lies.

Most theologians indeed admit this as regards mental restriction, but they commonly assert that false-saying is opposed to divine truthfulness, and therefore is intrinsically illicit, even in a case of necessity.

It is answered that false-saying is no more opposed to the truthfulness of God than homicide is to His supreme dominion; now, in a case of necessity, for the defense of oneself or of others, indirectly willed homicide is permitted, without the right of God being violated by such an action; why would the denial of truth (whether it be called mental restriction or false-saying) not likewise be permitted in a case of necessity, in defense of oneself or others? For then divine truthfulness is by no means injured, which remains intact, but only a particular truth is kept silent or denied, knowledge of which would be truly harmful.

417. Points to be noted for practice. (a) Whatever opinion is chosen, love of truth should be carefully and unceasingly inculcated upon all, especially the younger; when it is said that light lies are venial sins, at the same time it should be clearly and explicitly taught that it is shameful to lie and unworthy of an honorable man, and that those are worthy of every praise who speak candidly and openly according to the mind, even if they suffer not a few inconveniences from this. Therefore teachers should receive kindly boys who ingenuously confess their faults, and for the most part grant them pardon, or at least mercifully mitigate the penalty inflicted upon them; on the contrary they should strictly punish those who deliberately use lying and hypocrisy to cover their faults.

(b) If someone, in a case of necessity, is forced to have recourse to equivocations or false-sayings, let him use them only from a proportionately grave cause, and when by no other way can his own or another's damage be averted.[1]

[1] Nor should someone easily persuade himself that the threatening evil cannot be averted in another way. To the point is Bentzon, *Causeries de Morale pratique*, Paris, 1899, p. 134: "There are in life those distressing situations where one asks oneself whether concealing the truth is not a duty of mercy. There again, let us take good care. No doubt pain wants to be spared, weakness also. But with tact, kindness, a lively sympathy, there are scarcely any things that one cannot gradually say as they are." - Cf. Montaigne, *Essais*, liv. II, XVII.

§ V. On Violation of a Secret.

We shall treat: 1. of the notion of a secret; 2. of its obligation; 3. of the causes excusing from revelation of a secret; 4. of the consequences to be deduced from this.

[2] Lugo, disp. XIV, n. 135-151; Lessius, lib. II, cap. 2, n. 51-62; Sporer-Bierbaum, Tr. V, n. 673-674; Elbel-Bierbaum, P. IV, n. 387-392; St. Alphonsus, n. 970-971; Carriere, n. 964-976; Lehmkuhl, n. 1196-1199; Haine, q. 170-175; Noldin, n. 655-661.

418. I. Notion of a secret. A secret is a matter, not yet made public knowledge, which ought to be preserved hidden. - It can be threefold: (a) natural, which from the very nature of the matter ought to be guarded, because the matter cannot be manifested without damage to the neighbor; e.g., if you know where another's money is hidden which robbers intend to steal, by the natural law, without any promise, you are prohibited from manifesting this; (b) promised, when someone explicitly promises to keep silence concerning a hidden matter which he already knew beforehand; e.g., if someone, after hearing a secret, spontaneously or at the petition of a friend, says: I promise you to press the matter with deep silence; (c) committed, when the matter is not revealed to someone except under an express or tacit promise of preserving secrecy; express, if it is said: I shall not manifest this matter to you except under the condition that you be silent concerning it; tacit, when a hidden matter is committed to someone who from office, by force of the duty which he bears, or by special title of kinship or friendship, is bound to preserve the secret matter; thus physicians, advocates, priests, parents and friends and others, to whom a hidden matter is not manifested except because it is supposed that it is to be guarded faithfully. - When a sin is declared under the seal of confession, it is called sacramental.

419. II. On the obligation of a secret. First principle: Those who violate a natural or committed secret without cause commit a sin against justice, and indeed grave from its kind.

(A) As regards a natural secret, this is clear; for, from the definition given above, it cannot be violated without damage being inflicted upon the neighbor in the goods of body, soul, or fortune; and therefore to manifest such a secret without cause is the same as cooperating unjustly with the damage of the neighbor. - But the gravity of the sin depends on the gravity of the damage which is foreseen or can be foreseen.

(B) A committed secret obliges even more strictly from justice; for in this case there is a true contract, explicit or implicit, by force of which the one hearing the secret obliges himself to preserve it inviolably; if therefore he manifests it without reason, he harms the neighbor and society: (a) the neighbor, because he violates the strict right which the latter has that the secret be preserved, which was not revealed except under the condition of guarding it faithfully;[1] (b) society; for the common good demands that all may safely seek counsel or aid from those who, from office or by title of special friendship, are able to offer it; but men would be deprived of this utility if a committed secret could be manifested without grave cause; for who would confidently approach a physician, advocate, priest, and disclose to him secrets whose manifestation can harm him, unless he were certain that the same would be guarded inviolably?

[1] Hence civil laws affect violators of professional secrecy with severe penalties; cf. *Cod. pen. gal.*, art. 378; Supplement, p. 72*.

420. Second principle: Those who violate a merely promised secret without cause sin against justice or fidelity, according to the intention of the one promising.

For he who promises something can bind himself in two ways: from justice indeed, if by explicit declaration, or implicitly from various circumstances, he manifests his intention of obliging himself thus; from fidelity, if he does not wish to undertake such an obligation, but only intends to confirm words by deeds. In the former case, the promise of itself obliges under grave sin, provided the matter is grave; in the latter, it binds only under light sin. Yet it must be noted that it is unworthy of an honorable man to violate these promises without reason.[2]

[2] "There could not exist a society, in fact, which does not rest on this firmly established principle: that every word given is sacred... What should one think of a man who has several words, or who has no word, for it is all one? In vain he lavishes his word of honor; it has no value in the eyes of anyone. Can one imagine a more certain sign of moral decline?" (Marion, *Lecons de Morale*, 11th ed., Paris, 1901, p. 269-270.)

I said merely promised, because it happens not rarely that a promised secret is at the same time natural, because it cannot be revealed without damage; then it obliges from justice, according to what was said above.

421. III. On the causes excusing from revelation of a secret. These ought to be greater the stricter the obligation is of preserving it; but this obligation depends on two things: (a) on the nature of the secret; for from what has been said, a committed secret obliges more strictly than a merely promised secret; and that which is at the same time natural and committed binds more strictly than a merely natural one; (b) on the damage inflicted: the graver and more irreparable the damage inflicted by the manifestation of the secret is, the greater cause is required for revealing it. - With these things posited, there are four causes from which a secret can legitimately be manifested:[1]

[1] Some thought that a secret can never be revealed, even for saving the life of a friend; Fenelon excellently refutes these, in a letter, hitherto unknown, to L. de Sacy, which E. Levesque, S.S., made public in the periodical *Revue des Facultes Cathol. de l'Ouest*, April 1902, p. 511-526; from which we excerpt these things: "The silence which you would keep and which would cause your innocent friend to perish is contrary to humanity, to Christian charity, to good faith, and to the security of men in society... It is true that the secret which was told to you is a kind of deposit... It is not at all a deposit of sincere confidence, but a trap which is laid for you to force you to be an accomplice in a crime. Now society, which has so much interest in the preservation of other deposits, and in inviolable fidelity concerning other secrets, has a capital interest that the fraudulent deposit of so criminal a secret not be guarded, and that this deceiving depositor be confounded in his own deception... It is true that fidelity concerning a secret is a virtue, but this virtue is inferior to humanity, to charity, to the general order of human society... I would not wish, however, that you turn the secret against that unjust man from whom you hold it. To avoid this inconvenience, say to your friend only what is absolutely necessary for saving his life. Say it only to him alone. Say it to him only by using all the power which friendship gives you and all that which is acquired for you by the singular service which you actually render him, in order to prevent him from avenging himself."

422. 1. The public good of civil or ecclesiastical society; for since the obligation of a secret was chiefly introduced on account of the public good, its obligation ceases when the public good demands the revelation of the secret, according to this: the safety of the commonwealth is the supreme law. But here there is question of a proportionately grave public good: therefore the damage threatening the commonwealth must be compared with the damage going to follow from the violation itself of the secret, and the lesser

evil, with all things carefully weighed, must be chosen. Thus if someone under secrecy, even committed secrecy, knows another's plan of betraying a city, and cannot otherwise impede its execution, he can and ought to manifest it to authority; but light damage does not suffice, arising namely from the fact that some guilty person will remain unpunished.

423. 2. The good of him who handed down the secret; for he is not judged unwilling, since there is question of promoting his own good; thus if someone knows that another wishes to marry, although bound by a diriment impediment, and that this evil cannot otherwise be averted than by manifesting the impediment to his own priest. Yet the case of a secret which was committed by reason of public office is excepted (*De Matrim.*, n. 200): for then the public good demands that such a secret be guarded.

424. 3. The good of an innocent third party, namely when grave damage to him cannot be averted in another way; e.g., if you know, even under secrecy, that snares are being unjustly prepared for Titius, and that his death cannot otherwise be impeded than by revealing the secret, it is licit to do this; for charity demands that we impede grave damage to an innocent person even with damage to the guilty. - But if there is question of a committed secret, it is not licit to manifest it, unless the damage to be inflicted is from him who committed the secret; for, if it were revealed in other circumstances, the public good could be injured, as was explained above; but on the supposition that the one committing the secret himself wishes to kill or wound an innocent person, he now becomes an unjust aggressor, and the innocent person can be warned to beware for himself.[1]

[1] Yet in many regions this is prohibited to those who have received the secret from office; thus physicians are forbidden to reveal a hidden contagious disease even to relatives.

425. 4. One's own good, namely when he who heard the secret cannot flee grave damage except by manifesting the secret; for he is not judged to have obliged himself with so great an inconvenience.

Yet the matter becomes more difficult if there is question of a committed secret; e.g., Caius is falsely accused of homicide, whose author he knows from a committed secret: can he manifest him, in order to spare his own life? - It is answered affirmatively if the author of the crime falsely accused him to whom he committed the secret: for then he is an unjust aggressor. But if the calumny proceeds from another source, it is controverted; each opinion seems probable; in practice the name of the guilty man can be manifested, if he is first warned that he should provide for himself by flight: for then he cannot complain.

But when the common good demands that a hidden matter be altogether preserved, even with the greatest private damage, - e.g., if the guarding of the secret is necessary for the security of the State or army, - it is necessary to die for the fatherland rather than betray the secret.

426. IV. Corollaries. 1. He who without legitimate authority and just cause maliciously investigates or extorts the secrets of another, of itself sins gravely against justice.

For each one has a right to his own secret: for nothing is more proper to man than the hidden things of the heart; now that right is injured as often as another maliciously, that is, through force, deceit, or fraud, tries to fish out these secrets. - But the gravity of the sin depends on the very gravity of the hidden matter which is thus extorted.

It was said (a) without legitimate authority; for superiors, whether ecclesiastical or civil, can and ought sometimes to investigate secrets on account of the common good; thus Bishops inquire concerning those to be ordained whether something is known against them; likewise magistrates from office can and ought to uncover crimes even hidden ones.

(b) Without just cause: for if it is licit to manifest a secret for averting grave damage, from what has been said above, by that very fact it is licit to investigate it; e.g., if someone were very probably to suspect that snares were being unjustly prepared for him, he would have the right of investigating the matter, and of exploring the secret counsels of adversaries: for this is the case of legitimate defense.

427. 2. He who justly or unjustly uncovers the secrets of another cannot use them to the damage of the neighbor; e.g., if someone by chance hears others conversing about a new invention, still hidden, he cannot use this knowledge for his own advantage; for otherwise he inflicts injury upon them, because they will no longer be able to obtain the exclusive privilege to which they had a right. A fortiori if, by unjustly opening another's letters, you know that some office is vacant, you cannot seek it with the damage of another: for thus you would deprive another of the legitimate hope of obtaining the same.

428. 3. From this it can be understood what must be said concerning the violation of a secret contained in letters.

(A) Of itself it is a grave sin to open and read another's letters, without the consent of him to whom they were written. For often secrets, some of which can be of great moment, are contained in these letters, e.g., matters pertaining to family, to business, or to conscience; and therefore by reading these letters without license, one exposes himself to the danger of unjustly knowing a secret of great moment.

429. (B) Yet the sin will be light: (a) if it is reasonably presumed that in these letters nothing is to be found except what is of lesser moment, e.g., if someone already knows the nature of the matters which are usually treated between two friends; (b) if the letters are opened or read from levity of mind, or without full advertence, and the reading is interrupted as soon as it is noticed that the matter is grave.

(C) But there will be no sin: (a) if express or tacit consent is present, - which nevertheless ought not easily to be presumed, - e.g., if spouses or friends are accustomed to hand over to one another to be read the letters which they receive from a common friend; (b) if in certain communities or colleges it is licit for the superior, from received custom or rule, to read the letters of subjects; for then the inferiors, by accepting the custom or rule, give tacit consent; yet letters sent to major superiors or received from them are excepted, and also those in which secrets of conscience are opened, from the

reading of which the superior ought to abstain; (c) if the reading of some letter is necessary for averting damage threatening the commonwealth or private persons, according to what was said above.

430. (D) If letters have been thrown away by the owner, or knowingly left in a public place, they can be read without injustice, because he is deservedly judged to have renounced his right; but otherwise, if this happened against his intention.

But what if the owner tore up the letter and threw away its fragments? Not a few theologians hold that it can be read without injustice, because by so acting the owner renounced his right.[1] But much more probably others teach that this is not licit; for by tearing up the letters, he sufficiently signified that he did not wish them to be read by others, and therefore did not renounce his right.[2]

[1] Layman, lib. III, tr. III, p. 1, c. 4, n. 4; Lugo, d. XIV, n. 150; Vogler, n. 388.

[2] St. Alphonsus, lib. II, *De peccatis*, n. 70, with the authors alleged there.

Art. IV. On Injuries Concerning the Goods of Fortune, or On Theft.

431. The right which is inherent in man of possessing goods of fortune can be injured in two ways: by damage unjustly inflicted, by which the thing of the neighbor is destroyed or made worse; and by theft, by which another's thing is unjustly taken away. We shall treat of the former where Restitution is treated, by defining the conditions required for a damaging action so that place may be given to reparation; now we must treat of theft, especially by setting forth two things: 1. its nature and gravity; 2. causes excusing from the occupation of another's thing.

[3] St. Thomas, 2. 2., q. 66; Soto, lib. V, q. 3; Lugo, disp. XVI; Sayrus, lib. IX, cap. 15; Lessius, lib. II, cap. 12; Sporer-Bierbaum, Tr. V, n. 779-882; Billuart, diss. XI; St. Alphonsus, n. 518-546; Carriere, t. III, n. 981-1020; Marres, lib. II, cap. II, n. 158-190; Ball. P., Tr. VIII, n. 274-331; Lehmkuhl, n. 928-943; Noldin, n. 403-419.

§ I. On the Nature and Gravity of Theft.

1. Notion and various species.
2. General principle concerning the gravity of theft.
3. What matter is grave?
4. Specifically concerning small thefts.

432. I. Notion and various species of theft. 1. Notion. Theft, if it is considered generically, is the taking of another's thing, with the owner reasonably unwilling.[4] - It is said: (a) Taking, that is, either the carrying away, or even the detention, of another's good; for, as St. Thomas says,[5] "to detain that which is owed to another has the same character of harm as an unjust taking"; and this taking indeed is done with the mind of retaining the thing for oneself; for if it were done with the mind of soon returning it to the owner or preserving it safely, it would not be theft; and with the intention of using and enjoying the thing; thus it is distinguished from damaging, by which the goods of another are destroyed without any profit.

[4] Some add the word unjust; but this is involved in the words "with the owner reasonably unwilling"; others add hidden, but undeservedly, because then robbery could not be called a species of theft.

[5] St. Thomas, 2. 2., q. 66, a. 3.

(b) With the owner reasonably unwilling, and under this head theft is truly unjust; for if the owner were not reasonably unwilling, e.g., if a wife took some money from her husband lest it be dissipated in games or feasts, there would be no injustice nor theft.

433. 2. Species. Three species of theft can be distinguished morally: (a) theft simply, namely the hidden usurpation of another's thing, insofar as it is done while the owner is absent or at least ignorant; (b) robbery, that is, the open and violent taking of another's thing, while the owner is present and unwilling; for then a new malice is added to theft, namely an offense inflicted upon the person possessing, which must be declared in confession; (c) sacrilege, if the thing taken away is sacred, or dedicated to God, because a new malice is found here, namely a sin against the virtue of religion; - some indeed think every theft committed in a sacred place to be sacrilegious, although the thing taken away is not sacred; but more probably, with Lugo,[1] it is denied, unless that thing in some way pertains to the church, or at least is under its custody as a deposit, loan, etc. - Other species indeed are distinguished by jurists, but they do not change the moral species of the act.[2]

[1] Lugo, *De Justitia*, disp. XVI, n. 19; *de Poenit.*, XVI, n. 470.

[2] For France, *Cod. pen.*, art. 379-409. - As regards various modes of stealing (*chantage, vol a l'americaine, au poivrier, a la roulotte, au bonjour, a la carre, a l'amitie, a l'esbrouffe*, etc.), see E. Nicolay, *Histoire des Croyances, superstitions, moeurs, usages et coutumes*, Paris, 3rd ed., t. III, p. 355-389.

434. II. General principle concerning the gravity of theft: Theft is a sin against justice mortal from its kind.

(A) For primarily it is opposed to justice; above (n. 74), it was proved that the right of dominion over external goods flows from the natural law, and is morally necessary both to the individual and to society; now such a right is openly violated when another's thing is taken away with the owner reasonably unwilling; therefore...

(B) But secondarily and consequently it is opposed to charity, insofar as it brings sadness to the neighbor, disturbs peace, introduces quarrels, contentions, and hatreds; - and also to the good of the community, since it tends to destroy concord among citizens, necessary for the good of society, and to shake the security of rights.

Deservedly, therefore, it is numbered by the sacred authors among sins which exclude from the kingdom of heaven: "Neither thieves... nor the rapacious shall possess the kingdom of God."[1]

[1] I Cor., VI, 10.

435. Yet that sin admits smallness of matter; for he who steals one or two asses does not gravely offend private right, nor greatly disturb public peace.[2] - But even small thefts must altogether be reproved as something unworthy of an upright man, both because they lead to greater ones, and because they reveal a depraved inclination of mind.

[2] It is certainly astonishing that there are men who vehemently reprehend small thefts committed by servants, and at the same time do not hesitate to steal thousands of coins by frauds! Each is evil, but the second is worse: "For in that in which you judge another, you condemn yourself" (Rom. II, 1).

III. What Matter Is Grave in Theft?

436. Matter can be grave in a twofold way: (a) in itself and absolutely, with respect to all, even the rich; (b) relatively to the condition or disposition of the owner, from whom the thing is taken away.

1. In itself and absolutely a grave quantity must be admitted which suffices for mortal sin; for, as was said above (n. 285), injury is to be held as grave, not only when it gravely harms individuals, but also when it inflicts grave harm upon society; now, unless matter absolutely grave were present, the public good would often be gravely injured, even when the good of some private person would suffer only light damage; for, as Lugo rightly says (n. 29), even if the theft of one gold coin would not bring great detriment to a very rich man, nevertheless it would cause great damage to society, because, if such a theft were not prohibited under grave sin, thefts of this kind would be multiplied, from whose frequency the greatest detriment would be brought upon the rich in general and upon the whole of society; and this danger cannot be avoided unless individual thefts of some moment are gravely prohibited.

But what that absolutely grave matter may be cannot be determined except by the moral estimation of the prudent, according to the various circumstances of times and places: for the value of money is diversified according to various regions and various times. Now today in most regions of Europe, a sum of about sixty francs is commonly reputed absolutely grave matter; in the United States of America, seven or eight dollars. - And this indeed is established for confessors; but in sermons to the people it is not expedient to define the matter thus, lest perhaps this be twisted into a depraved sense.

437. 2. There is also relatively grave matter, namely that which brings grave harm given the condition of the owner; for in order to constitute theft, it is required that the owner be reasonably unwilling; now the owner, given the same sum of money, will be more or less reasonably unwilling, according as he more or less needs the money taken away, or is more or less poor. - But the commonly received principle is that in theft that matter is judged relatively grave which corresponds to the daily wage, or to the money which suffices for one day for a father of a family for the support of himself and his family, indeed for a worker for his own daily support. And deservedly; for he suffers grave harm who is unjustly deprived of the sum required for daily food.

Hence with respect to a worker, in Europe, ten, fifteen, or twenty francs constitute relatively grave matter, according to diverse places; in America three or four dollars; - with respect to the poor, in Europe, two francs, or, if they are very poor, twenty asses can be grave matter.

Likewise he who steals from a worker an instrument without which he cannot work inflicts grave damage and sins gravely, even if the instrument in itself is of modest price, at least when another

instrument cannot be procured in useful time: for then he is deprived of a means necessary for earning support.

438. 3. In order to judge concerning the gravity of theft, attention must also be paid to the disposition of the injured person; for since one of the conditions necessary for theft is that the owner be unwilling, theft will be graver or lighter according as the owner is more or less unwilling.

(a) Now generally a spouse in relation to a spouse is judged less unwilling than in relation to others, on account of the mutual love by which they accompany one another, and especially on account of a certain community of goods which exists between them; and therefore the matter required for mortal sin is greater for spouses than for strangers; according to St. Alphonsus,[1] a doubly greater amount is required. Indeed it can happen that the takings of wives are not thefts, if the license of the husband can deservedly be presumed.

[1] *Homo Apostolicus*, Tr. X, n. 32.

(b) The same is said of children of the family in relation to parents, on account of a similar reason. Yet for practice it must be noted that sometimes younger children sin gravely, even in small thefts, on account of erroneous conscience, because they falsely judge these to be grave sins.

439. (c) In relation to servants, a distinction must be made: if they appropriate for themselves common foods, which are not carefully guarded, the sin is not mortal, provided these are eaten by the servants themselves, and therefore are neither sold nor carried out of the house; the reason is that the masters are not judged gravely unwilling. - But if they steal things carefully guarded, money, garments, generous wine, etc., the quantity which suffices for mortal sin for strangers will be grave matter also for servants, because in relation to all these things the master is not less unwilling for these than for strangers; indeed, according to common estimation and civil laws, theft of this kind is reputed graver, as an abuse of confidence (*abus de confiance*).

Therefore servants should be seriously warned about this matter, especially if they are Catholics employed by non-Catholics, lest by such a manner of acting they bring disgrace upon the Catholic religion.

IV. On Small Thefts Insofar as They Coalesce into Grave Matter.

440. Small thefts, which of themselves do not exceed venial sin, if they are morally united, can coalesce into grave matter,[1] in a fourfold way: - 1. By reason of intention: he who commits small thefts, whether against the same person or against diverse persons, with the intention of arriving at a notable sum, sins gravely, because by that very fact he intends to inflict grave damage either upon a determinate person or upon society. - Therefore he sins gravely who, when he intends to steal one hundred coins from Titius, so that he may execute the plan more safely, steals two or three coins again and again; likewise he who uses false weights, although each time he defrauds in small matter; or he who, under a feigned pretext, successively extracts a great sum of money from various persons: for then grave matter is in fact intentionally taken away.

[1] This indeed can be deduced from the fact that Innocent XI, March 2, 1679, condemned as scandalous and dangerous in practice this proposition (n. 38): "One is not bound under the penalty of mortal sin to restore what has been taken away by a few thefts, however great the total sum may be." (Denzing., n. 1055.)

Yet he who intends to steal a notable sum several times from the same person more probably does not sin mortally as often as he steals something small, but commits only one mortal sin, namely at that instant at which he enters upon the plan of stealing, - unless he revokes the intention previously conceived and afterward renews the same.

441. 2. By reason of accumulation: he who has already committed light thefts several times, even without the intention of arriving at a notable sum, sins mortally at the time when he notices that he is then at last completing grave matter, provided there is moral union between the various thefts, and a serious will of repairing the preceding thefts is absent: for knowingly and willingly he inflicts notable damage. But moral union exists when little thefts are committed within a short interval of time, e.g., within two months. But if there is a great interval between the various thefts, e.g., six months, the little thefts, from the common estimation of men, are not judged morally united, and therefore under this head they do not constitute grave theft.

442. 3. By reason of retention: he who knowingly and willingly retains a great quantity of another's good, unjustly obtained either from one or from several, sins mortally, even if no moral union is present between the various small thefts, because the retention of another's thing in great quantity, no less than the taking itself, inflicts great damage upon individuals or society.

443. 4. By reason of cooperation: those who by common counsel or concurrence, together or successively, steal a notable sum, sin mortally, although individuals steal only light matter; for individuals consent and cooperate in the whole damage. But otherwise it must be said if there was not mutual conspiracy or mutual help, but individuals stole independently from one another, although they noticed that notable damage was being inflicted upon the same owner. - Likewise if several, moved not by mutual conspiracy but by mutual example, have committed light thefts, they do not sin gravely against justice, although individuals sin, perhaps gravely, against charity, by reason of scandal.

444. Corollary: What matter is required in small thefts, that it may become grave? All concede that a greater quantity is required than if a thing of great price were stolen together and at once; for the owner in this case does not so much feel the damage, and therefore is less unwilling. But what that greater quantity may be can be determined only from the common estimation of the prudent; according to the more common opinion, if small thefts are committed against the same person, the matter is grave if it exceeds by half the sum commonly required for grave theft (e.g., if 30 fr. is held as grave matter, 45 fr. are required in this case); but if they are committed against diverse persons, matter is judged grave if it is twice as great (therefore 60 fr. in this hypothesis).

N. B. Even when small thefts do not attain mortal sin, some restitution is to be advised, lest otherwise penitents make a step from small things to greater ones.

§ II. On Causes Excusing from the Occupation of Another's Thing.

445. Since theft is defined as the unjust taking of another's thing, no cause properly excuses from it; but there can be causes excusing from the occupation of another's thing. There are two: necessity and hidden compensation.

I. On Necessity Insofar as It Excuses from the Occupation of Another's Thing.

446. First principle: He who is in extreme or quasi-extreme necessity can take from the goods of another as much as is necessary for him to escape this necessity, unless however the owner is in the same necessity.

It is explained. Extreme necessity is that in which the necessities of life are lacking, or a certain danger threatens of losing a good of an order superior to the goods of fortune, e.g., integrity of members, health, liberty, chastity. Quasi-extreme necessity is verified when someone is in very probable danger of losing a superior good, namely life, a principal member, etc.

447. It is proved. According to the order of divine Providence, temporal things were primarily instituted for assisting human necessity, and therefore by the division and appropriation of things it is not impeded that man's necessity should be assisted from things of this kind; now if a man, constituted in extreme or quasi-extreme necessity, could not appropriate to himself from the things of another as much as is required to escape this necessity, the order of divine Providence would be frustrated and human law would prevail over natural and divine right; therefore. - Or, in other words, the right of life, members, and liberty is superior to the right of property; moreover in a conflict of rights, the lesser ought to yield to the greater, from what was said above, n. 29.

Yet it is said "unless the owner is in the same necessity," because then the condition of the possessor is better.

448. Corollaries. 1. In extreme or quasi-extreme necessity, it is not licit to take away more than what is necessary; whence, if the sole use of the thing suffices, e.g., of a horse for fleeing, of a gun for the defense of life, etc., the obligation remains of restoring these things when the necessity ceases.

449. 2. If someone, in a case of necessity, takes another's thing, and possesses goods or the hope of possessing them, he is bound to restitution when the necessity ceases, even if the thing was consumed or destroyed; for he could take away nothing in this case except under the burden of restitution, since nothing else is required that he may go out from present necessity. - But if, at the time when the thing was taken away, the one taking away had neither actually nor in hope the means from which he might restore, probably he is bound to nothing afterward, even if he becomes rich, because he made the thing his own without any burden of restitution; yet it is very fitting, according to all, that he return an equivalent sum. But we hold as more probable the opinion which asserts that he is bound to restitution even in this case; for, by force of the general principle, he

cannot take away more than what is necessary; moreover, even in this case, he needed only the use of the thing, and therefore he could not take the thing away except on the condition that he return it as soon as he is able.

3. When a poor man is in extreme necessity, another can take away another's thing for relieving the necessity of this poor man, provided he himself cannot assist him from his own goods: for what someone can do by himself, he can also do through another.

450. 4. It is controverted whether, in the case of extreme or quasi-extreme necessity, it is licit to steal a thing of great value. Some affirm, because then all things become common;[1] others deny, because, even in a case of necessity, no one is bound to aid another with so great an inconvenience. - We think that a thing of great price (e.g., a horse for fleeing) can then indeed be taken away, but under this law, that it be returned as soon as this can morally be done: for, on the one hand, life or integrity of members is much more precious than a horse or another thing of this kind, and on the other, the use alone of this thing by hypothesis is necessary.

[1] That principle, which is found among some theologians, can only be accepted with a sufficient grain of salt; for, as we have said, in this case not all things become common, but only that which is required for preserving life or health.

451. 5. A poor man who in these cases needs some thing regularly ought to seek it from the owner, if this can be done, so that contentions may thus be avoided; yet if he takes it away, without any petition, he does not injure justice, since he has a right in the thing, but he sins venially, unless he is excused by some reason, by not preserving the legitimate mode.

452. 6. It is controverted whether a rich man who neglects to assist one in extreme need sins only against charity, or also against justice. But if by force or threats he impedes the poor man from taking that thing, he certainly injures justice, since he obstructs the right which is inherent in one in extreme need of occupying something necessary for himself; and under this head he is bound to repair the damages which followed from this.

453. Second principle: In necessity simply grave or common, it is not licit to take away another's thing.

Grave necessity is that in which the neighbor is very probably going to suffer a notable loss of goods or loss of status, unless he is helped by another's aid. But common necessity is that in which ordinary poor persons are placed, who, unless they are helped, live a troublesome life, although they are able to provide necessities for themselves.

Now if any cause excused from the occupation of another's thing in the aforesaid cases, this would be the good of society; but the common good demands, on the contrary, that it not be licit to take away another's thing for assisting necessity of this kind; for since cases of this kind are altogether frequent, and men easily persuade themselves that they are constituted in such necessity, the security of possessions would be disturbed; and idleness and the squandering of goods would be favored, if it were licit for each person by his own authority to invade another's things in so common a necessity. -

Deservedly, therefore, Innocent XI reproved this proposition (36) as scandalous and pernicious: "It is permitted to steal, not only in extreme necessity, but also in grave necessity."[1]

[1] In Denzing., n. 1053.

II. On Hidden Compensation.

Here there is no question of legal compensation, by which the mutual obligation of two debts is juridically extinguished, but of an extralegal act by which a creditor secretly takes, from the goods of the debtor, what is owed to him; this compensation is called hidden, because it is done without recourse to the judge, and for the most part at least while the debtor is unaware.

454. Principle: In general hidden compensation is illicit; but in certain cases it can be tolerated, if the due conditions are present.

1. In general it is illicit, as being full of dangers; for if it were permitted to each one to vindicate his own rights, which he thinks have been injured by another, without recourse to magistrates, a broad way would be opened to thefts, since for the most part men enlarge their own rights and lessen those of others. Therefore in general those who think themselves injured ought to have recourse to judges.

455. 2. Yet when this recourse is hardly morally possible, hidden compensation, clothed with the due conditions, can be tolerated. For justice is not injured when from another's goods only that is taken away which is owed from strict justice; moreover public order is not disturbed if this is done very rarely, from a grave cause, when another way of recovering one's own goods is lacking.

456. The required conditions are numbered as five:

(a) That the debt be from strict justice, and not from charity or from a certain fittingness; thus a servant does not have a right to compensation to whom the master had promised, from gratitude, a certain sum of money which in fact he did not give; nor also a non-necessary heir, who has no part in the testament.

(b) That it be morally certain; for in doubt the condition of the possessor is better; otherwise, since men are prone to exaggerating their own rights, a way would be opened to injustice.

(c) That the debt cannot be recovered otherwise without grave inconvenience, e.g., without many expenses or danger of exciting enmities.

(d) That the damage of the debtor or of a third party be guarded against: of the debtor indeed, by employing means lest he pay twice or remain in bad faith, thinking that the debt was not paid; which can be done by a fictitious condonation; - of a third party, by avoiding lest another, e.g., a servant, be accused of theft.

(e) That the thing which is taken be of the same value as the thing owed, and, if it can conveniently be done, of the same nature and species.

457. Corollaries. (A) Servants or workers who have freely agreed about some wage cannot use compensation on the pretext that the work furnished is greater than the promised salary; for the pact is to be stood by, unless it is evidently unjust. Hence Innocent XI condemned this proposition (37) as scandalous and pernicious: "Male and female domestic servants can secretly take from their masters to compensate their service, which they judge greater than the salary which they receive."[1] - But otherwise it must be said if, compelled by force, fear, or necessity, they agreed about a salary which, according to the estimation of prudent men, is less than just, as will be explained below where the hiring of services is treated.

[1] Denzing., n. 1054.

(B) If a servant of his own accord increases the services owed, he does not acquire a strict right to a greater wage, nor therefore to compensation, because he is judged to do this gratuitously in order to conciliate to himself the favor of the master. But if he furnishes this from the express or tacit will of the master, he is worthy of a greater wage; therefore, if this has not been paid, and the servant has used compensation, he is not to be compelled to restitution.[2]

[2] According to Sabetti (n. 411, q. 2), those who are in charge of cars drawn along railway routes (*conducteurs d'omnibus de tramways, car-conductor*) can use hidden compensation, if, in the judgment of God-fearing men, the payment which they receive is truly unjust. - This indeed can be tolerated when it is certain that the matter is so; but it is much more expedient that these and other workers form associations (*syndicats professionnels, labor-unions*) and, by united strength, obtain a just salary; otherwise, little by little, a way is opened to frauds and thefts.

458. (C) Merchants who freely sell below the legitimate price cannot use hidden compensation, namely by unjust weight or measure; otherwise, if by error, force, or fear they delivered a thing at too cheap a price.

NOTE. In practice, confessors should not advise hidden compensation, since it is full of dangers; but, if penitents have used it under the conditions explained above, they should not be compelled to restitution.

And let these things suffice concerning the injury of right: now we must treat of the reparation of the same.

Part I — Chapter III: On Restitution

Chapter III. On Reparation of an Injured Right, or On Restitution.

459. When a strict right has been violated, justice demands that it be repaired: this is done by restitution, and therefore we must now treat of it.

Preliminary notes: on the notion and obligation of restitution.

I. On the roots of restitution:

- On unjust damaging:
  - insofar as it is unjust;
  - insofar as it is an efficacious cause of damage;
  - insofar as it is set down by a culpable action.
- On possession of another's thing:
  - on a possessor in good faith;
  - on a possessor in bad faith;
  - on a possessor in doubtful faith.
- On unjust cooperation:
  - who are bound to restore?
  - in what order?

II. On the mode of restoring:

- In general:
  - to whom?
  - in what place?
  - at what time?
  - how must restitution be made?
- As regards certain goods in particular:
  - as regards goods of the body;
  - as regards goods of the soul;
  - on account of the impeded attainment of a good;
  - as regards defrauded taxes.

III. On causes excusing from restitution:

- for a time;
- forever.

By the name of restitution the older Theologians understood only the rendering back of another's thing; but modern theologians, by extension, designate by this name any reparation whatever of an injured right.

Preliminary Notes on the Notion and Obligation of Restitution.

460. Restitution is an act of justice by which an injury is repaired to equality, whether by compensation of damage unjustly inflicted, or by the rendering back of another's thing. - Therefore it differs from satisfaction, which is the reparation of injured honor and directly touches the person; and also from the payment of a debt, by which a certain obligation is extinguished, although no injury has been inflicted.

[1] St. Thomas, 2-2, q. 62; Soto, lib. IV, q. 6-7; Molina, disp. 714-716; Sayrus, lib. X, Tr. 1; Lugo, disp. VIII, n. 17-25; Lessius, lib. I, cap. VII, dub. 4; Billuart, diss. VIII, art. 1-2; St. Alphonsus, n. 547; Carriere, III, n. 1021-1031; Baller. P., n. 332-335; Noldin, n. 422-424; Bourdaloue, *Sermon pour le 22e Dim. apres la Pentecote*, on Restitution.

461. Principle: There is a precept of justice, of itself obliging under grave sin, to restore, in reality or in desire, what is owed to the neighbor from strict right.

It is said: (a) of itself obliging under grave sin: for just as injury of itself is forbidden under grave sin, so the reparation of the same of itself is commanded under grave sin; but if the injury is light, reparation is owed only under light sin.

(b) In reality or in desire; namely in reality, as often as this is possible; but if for the time it is morally impossible, at least the intention or desire of restoring as soon as possible must be conceived in the mind.

It is proved. (A) By reason. (a) Justice certainly forbids that an injury inflicted on someone be continued; but he who does not restore a thing taken away, or does not repair damage inflicted, when he can furnish this, by that very fact does not cease to cause injury; for, by unjustly detaining another's thing, he prevents the neighbor from the use of his own thing, and thus does injury to him; likewise, by not compensating damage, he as it were renews it, and thus does not cease to violate the right of another. - (b) No sin can be remitted without sincere contrition and a firm purpose; but he lacks genuine contrition who wishes to retain another's good unjustly possessed, - nor does he have a firm purpose of not sinning who pertinaciously refuses to repair damage unjustly inflicted by himself.

(B) Deservedly, therefore, Scripture commands and commends restitution. (a) Under the Old Law it was said: "If anyone shall have stolen an ox or a sheep, and shall have killed or sold it, he shall restore five oxen for one ox, and four sheep for one sheep... If he does not have that which he may render for the theft, he himself shall be sold."[2] Hence remission of sins was granted to him who restored the stolen thing;[1] and those who were held as saints, such as Tobias, were altogether solicitous about making restitution: "See lest perhaps it be stolen: return it to its owners, because it is not lawful for us either to eat anything from theft, or to touch it."[2] - (b) Under the New Law, Zacchaeus, the publican converted to Christ, is reported to have said: "If I have defrauded anyone of anything, I restore fourfold";[3] and those who unjustly retain the salary of workers are most gravely reproved:[4] "Behold the wages of the laborers who have reaped your fields, which has been defrauded by you, cries out, and their cry has entered into the ears of the Lord of Sabaoth."

[2] Exod. XXII, 1-3. Here however it is said that more must be restored than what was unjustly taken away, by way of penalty, by which the Jews might be more efficaciously deterred from theft.

[1] Ezech., XXXIII, 14-15.

[2] Tob., II, 21.

[3] Luke, XIX, 8. There fourfold restitution is promised, not indeed from justice, but, as is said, unto the abundance of right.

[4] James, V, 4.

Hence in Canon Law this axiom uttered by St. Augustine has been received:[5] "The sin is not remitted unless what was taken away is restored."

[5] Behold the words of St. Augustine (*Ep.* 153, to Macedonius, n. 20, in Migne, P. L. XXXIII, 662): "For if another's thing, on account of which the sin was committed, when it can be restored, is not restored, penance is not done, but feigned: but if it is truly done, the sin will not be remitted unless what was taken away is restored; but, as I said, when it can be restored." These words were inserted in the Decree of Gratian, cap. *Si res aliena*, I, caus. XIV, quaest. 6; and from the last words rule 4 of law in 6° was formed.

462. Corollaries. (A) The obligation of restoring obliges under mortal sin when the matter itself is grave, according to the principles explained above concerning theft (n. 436); hence he who restores only in part, yet so that the part which he retains does not attain grave matter, does not sin gravely by detaining it; but, even in this case, restitution is to be advised under venial sin.

463. (B) The precept of restitution is primarily negative, insofar as it forbids that another's thing be unjustly detained; and secondarily affirmative, insofar as it commands another's thing to be rendered back, precisely because it is prohibited to detain it. Under this head restitution must morally be made as soon as possible; otherwise the owner is unjustly deprived of the use of his own thing. Hence he who cannot here and now restore is bound immediately at least to have the intention of restoring, and at the same time to take care that he satisfy his obligation as soon as possible. Likewise if he cannot restore the whole, let him immediately restore a part, if this can be done.

464. (C) He who voluntarily omits restitution sins during the whole time of the omission, not only insofar as he positively conceives the purpose of not restoring, but also insofar as he voluntarily omits to satisfy his obligation. Yet he who keeps another's thing for a long time commits one sin in number, provided he always perseveres in the same purpose of not restoring. But if he explicitly or implicitly revokes this purpose, he sins as often as he renews that interrupted purpose.

Nevertheless the confessor should not too molestingly question the penitent about the number of internal sins committed in this matter; but he should only inquire whether he continuously persevered in the same will of not restoring, and for how much time another's thing was detained, so that thus he may be able morally to infer how great the number of sins is. The reason is that for the most part the faithful do not think about this multiplication of internal sins.

465. (D) He is certainly unworthy of absolution who, without an excusing reason, does not wish to restore another's thing of great price, when he is conscious of the obligation incumbent upon him: for he lacks genuine contrition. The same must be said of him who, without cause, defers restitution, - or who, burdened by debt, makes useless expenses and does not pay debts. - But if the penitent is in good faith, and at the same time it is foreseen that an admonition will not

be profitable (which nevertheless should not easily be presumed), the admonition can be omitted, according to what was said above in the Treatise on Penance, n. 395-397.

Art. I. On the Roots of Restitution.

The cause on account of which restitution must be made is the injury of another's strict right; yet this can happen in two ways: by damage unjustly inflicted, - and by detention of another's thing; therefore a twofold root of restitution is distinguished: unjust damaging, and detention of another's thing. But because in both cases unjust cooperation can be present, this likewise must be discussed.

§ I. On Unjust Damaging.

An unjust damager is he who inflicts damage upon another, without cause, even without his own profit.

[1] St. Thomas, 2. 2., q. 62, a. 4; Soto, lib. IV, q. 7, art. 3; Lugo, disp. XVIII, n. 75-116; Lessius, cap. 12, dub. 18-19; Billuart, diss. VIII, art. 3-7; Sporer-Bierbaum, Tr. V, n. 791-795 and 884-895; St. Alphonsus, n. 549-556; Carriere, n. 1103-1161; Baller. P., n. 337-353; Lehmk., n. 962-980.

466. Principle: In order that the damager be bound to restore, three conditions are required simultaneously: that his action (under which name the omission of a due action also must be understood) be unjust, an efficacious cause of the damage, and theologically culpable.

1. The damaging action must be unjust, that is, a violation of the strict right of another, whether in a thing or to a thing; otherwise, there would not be an injury properly so called, nor therefore an obligation of restoring. In truth, if the action is opposed only to charity, equity, or another virtue, it can indeed be gravely sinful, but it does not require the reparation of a right which in fact was not violated.

(A) He is not bound to restitution who, while he uses his own right, harms others: e.g., he who by legitimately trading is the cause why other merchants sell less; or he who, fleeing from enemies, tramples another's crops underfoot; or who by persuasions and counsels persuades another not to make a testament in favor of some person; likewise he who digs a deep pit on his own property, into which a stranger falls.

(B) On the contrary, he who by unjust means, namely by force, fraud, lying, or unjust detraction, impedes another from attaining some good to which this other has a strict right, is bound to restitution; thus the advocate who impedes a creditor from obtaining payment of some debt; the heir who prevents the notary (*notaire*) from writing the testament which the dying man wishes to make in favor of another; the merchant who harms the affairs of the neighbor by intercepting his letters, or by spreading calumnies against him; likewise he who by calumnies impedes a superior from conferring a benefice or office upon someone worthy, who otherwise would have been selected: for although this one does not have a strict right that he be selected, he does have a strict right not to be excluded from this office by unjust means.

467. (C) The obligation of restoring of itself does not arise from distributive justice, because, although the public good demands that offices and benefices be distributed to the more

worthy, candidates do not have a strict and rigorous right to obtaining these offices; hence their right is not strictly violated.

Yet there are cases in which the violation of distributive justice accidentally obliges to restitution, namely when the strict right either of individuals or of society is injured. Now it is so:

(a) In a competitive examination: namely if some competitor is unjustly judged by the examiners as unworthy, while in truth he is worthy, he is deprived of his strict right, and therefore place is given to restitution; yet, since not all the worthy are chosen by superiors, the competitor is deprived of a strict right not to the office itself, but to the hope of obtaining it; and therefore restitution in this case will be lesser. - Likewise, if a limited number of competitors is admitted into such or such a school, examiners who unjustly count as worthy one who in truth is not worthy deprive one of the competitors of the strict right which he had of entering the school, and under this head are bound to compensate the damages to him.

But the superior who, among the worthy, does not select the more worthy, does not seem to be strictly bound to restitution, because the more worthy one, although to be preferred to the others both from equity and from the public good, does not have a strict right that he be selected, unless however this has been determined by some law.

468. (b) In the distribution of burdens, e.g., of taxes. Those who knowingly and willingly burden some citizens too much and others less are bound to restitution, because they inflict damage upon certain citizens, or upon the State, according to the various rights which have been injured.

(c) In the distribution of offices. If some superior (president, governor, commander, etc.) knowingly and willingly confers certain offices upon those who are altogether unable to exercise them, by that very fact he is the unjust cause of the damage which arises from this either to society or to individuals; for by choosing such men, he could and ought to have foreseen that these damages would arise, and from his office he is bound to impede them; thus, e.g., if someone were to choose as physician or surgeon of an army one who is altogether unfit for this office.

469. 2. The damaging action must be an efficacious cause of the damage; for this two things are required: that damage was truly inflicted (for a damaging intention does not suffice); that it followed from the action as from its own cause. For he alone is bound to repair damage who is truly the author of the damage; but no one can be called author except he who, whether physically or morally, effects the damage or has influence upon it, or in other words, who is truly the efficient cause, whether total or partial, of that damage.

470. Hence he is not bound to restitution who is only the occasion of damage; for an occasion is not a true cause, but only that upon the placing of which the true cause acts.

Thus, e.g., Peter kills John, and Paul, who is thought to be the author of this homicide, is seized and condemned; Peter, by killing John, is not the cause, but only the occasion, of Paul's death; for the true cause of this death is the judge, who condemned Paul from insufficient motives. - But, if Peter purposely used Paul's garments or weapons so that Paul might be accused of John's killing, he truly is

the moral cause, at least partial, of Paul's death, because he used unjust means to deceive the judge; and therefore he is bound to restitution. - But what if the same Peter indeed foresaw and willed that Paul be condemned, although he did not use unjust means to deceive the judges? Certainly he sinned gravely against charity, indeed against justice by an internal affection, namely by desiring that the judges condemn an innocent man; but whether he violated justice externally, so that he is bound to restitution, theologians do not agree; some equate this case with the preceding and answer negatively; but others, more probably, as I think, affirm: for by killing John, he foresaw and willed Paul's condemnation, and, although the judges are the principal cause of the unjust condemnation, he can be held as a cooperator, insofar as he unjustly placed an action from which Paul's death would follow.

471. Nor is he bound to restitution whose action was only a condition *sine qua non*, or that without which the true cause cannot act.

Titius, e.g., returns to Sempronius a gun, which the latter abuses for killing Caius; an action of this kind could be a condition without which the homicide would not have been committed, but not the true cause of it, which is nothing other than the malice of Sempronius. But otherwise it would have to be said if Titius had furnished the gun to Sempronius for this end, that the latter should kill Caius; for then he would be a partial cause, or cooperator, of the homicide.

472. An action which is only a cause by accident must be held as an efficacious cause; but because the damage cannot be foreseen as probably going to follow, then the action of the agent does not have a moral connection with the evil effect, since the third condition, or theological fault, is lacking.

Thus he who takes away from a miser a thing of slight value, without being able probably to foresee that the miser will die of sadness because of this, is only a cause by accident of his death, since the true cause of this is the depraved affection of the miser; nor therefore is he bound to restitution of the damages arising from the death; - but otherwise, if he foresaw and intended this effect, because then he is an unjust cooperator in the death. Likewise, he who in a remote place lights a fire, which a wind unexpectedly risen casts into crops, is only a cause by accident of this conflagration; otherwise, if he lit the fire when the wind had already risen, so that he could have foreseen the conflagration.

473. Therefore, for judging whether some action is an efficacious cause of damage, attention must be paid to the natural connection between the action and the damage inflicted. If the agent employed means suited to inflicting the damage, he truly is the efficient cause of this damage; but if he did not employ means suited to inflicting it, he is not its efficacious cause. - As regards the influence of intention upon injustice, see n. 288.

474. 3. The damaging action must be culpable. But fault can be twofold: theological, or moral, and juridical. The former is that which is done with advertence on the part of the intellect and consent on the part of the will; - the latter, i.e., merely juridical, is the omission of diligence required by civil laws, which nevertheless, on account of inadvertence or indeliberation, is not imputable before God. Hence any external or internal causes which remove the free voluntary, e.g., ignorance, indeliberation, force,

fear, etc., excuse from theological fault; while from juridical fault only those legal causes excuse which can be proved in the external forum, such as defect of reason, coercion, fortuitous event, etc. With these things posited:

475. (A) With natural law considered, apart from contract, there is no strict obligation of repairing damage except from theological fault. For (a) in order that we may be bound by the moral obligation of restoring, the damaging action must proceed from us not only as from a physical cause, but also as from a moral and free cause; but if theological fault is not present, the action does not proceed from the free will, but from a fortuitous event, or from imprudence of which we are not conscious. (b) Moreover, the obligation in conscience of repairing damage, even apart from theological fault, is not necessary for the security of dominion; for the moral obligation of employing common diligence always remains, and this suffices for providing for this security. Indeed such an obligation would be harmful; for it would give place to many anxieties, and thus not a few would abstain from acting, lest perhaps they incur the obligation of repairing damages inadvertently inflicted.

Yet I said, apart from contract, explicit or implicit; for if a pact has intervened concerning repairing damage, in whatever way the thing perishes, this must be stood by, even in conscience, since a pact of this kind is legitimate; e.g., if a maidservant promised that she would pay damages from a fortuitous event; if the thing perished while someone was in culpable delay.

476. (B) Civil laws which decree an obligation of repairing damage from merely juridical fault oblige in conscience, but only after the sentence of the judge. - It is explained: (a) they oblige in conscience, because they are just, since they favor all citizens equally, and render men more vigilant lest they inflict damage upon others; - but after the sentence of the judge, for, on the one hand, it is too hard that someone should of his own accord condemn himself to the reparation of damage which morally is not imputable to him; and on the other, the purpose of the law is sufficiently obtained if the damager from merely juridical fault is bound to repair damage after the sentence of the judge.

(b) Yet, even before the sentence of the judge, charity obliges to the reparation of that damage which is certainly owed from civil law, when the injured person asks this, and moreover cannot have recourse to the judge without grave inconvenience, e.g., without expenses burdensome to him.

Corollaries.

1. On the Extension of the Obligation of Restoring.

477. Restitution on account of damage inflicted must be made to equality; and therefore the unjust damager is bound not only to restore the price of the thing destroyed, but also to compensate all damages which effectively and culpably followed from his action; thus he who culpably burns another's house must pay not only its price, but also the expenses which the owner incurs under this head, until a new house has been built or procured. The reason is that restitution is an act of the virtue of justice, which requires that there be rendered to the neighbor, to equality, whatever is owed to him from strict right.

Therefore he who has inflicted grave damage with grave fault is bound under grave sin to repair the whole damage.

478. But if damage is inflicted from light theological fault, a distinction is needed:

(A) If the lightness of the fault arises from lightness of matter, it is certain that restitution must be made under light sin.

(B) If the fault is venial from imperfection of advertence or consent, more probably, with natural law alone considered, there is no obligation of restoring grave damage inflicted; e.g., if a servant from venial negligence left the doors open, from which it happened that a grave theft was committed; - if from venial negligence death is inflicted with a gun. For such an obligation cannot be imposed under grave sin: because the obligation of repairing great damage is something grave; but a grave obligation cannot arise from a light delict, since there ought to be proportion between the delict and the penalty. Indeed, according to some,[1] this obligation cannot be imposed under light sin; for there ought to be proportion between the gravity of the obligation and the matter of this obligation; but it seems more probable, from the common sense of honorable men, that the obligation of repairing the whole damage must be imposed under light sin.

[1] Thus Lugo, disp. VIII, n. 56; St. Alphonsus, n. 552 with the authors alleged there.

Yet not a few theologians[2] probably say that restitution must be made according to the proportion of the fault, and therefore that a light part of the damage must be repaired under light sin.

[2] Laymann, lib. III, tr. III, c. 6, n. 4; Carriere, n. 1156.

In practice, the damager is not to be compelled to restitution before the sentence of the judge, but only exhorted to compensate the damage in the better way in which it can be done, by arranging the matter with the injured person.

479. (C) If the fault is venial, although fully deliberate, because grave damage was inflicted through several venial acts, a distinction must be made:

(a) If small damages have been inflicted upon the same person, and are joined by moral union, there is a grave obligation of restoring; for the damager is bound to repair the whole damage deliberately and unjustly committed by him; but in this case the damage inflicted is something grave, and the gravity of the obligation is proportioned to the gravity of the matter; therefore under grave sin he is bound to repair the grave damage.

(b) But if light damages have been inflicted upon diverse persons, so that no one has suffered grave damage, more probably the obligation of restoring is only light; for, since no one has been gravely injured, no one can under grave sin compel the damager to reparation; moreover, since from this damage he has not become richer, he is not bound to restore under grave sin by reason of detention of another's thing; and thus there is a difference between a damager and him who has committed small thefts.

2. On the Obligation of Impeding Damage Going to Follow from an Action Already Posited.

480. (A) He who by an inculpable or lightly culpable action has posited the cause of another's damage is bound to impede such a cause from producing its effect, provided he can effect this without relatively grave inconvenience; otherwise he is bound to restitution, and indeed under grave sin, if the damage is grave.

Thus, e.g., a physician or pharmacist who inadvertently prescribes or furnishes poison, and afterward notices this; - he who inadvertently casts fire into a heap of hay is bound, if it can be done, to extinguish the fire; he who from error gravely injures the reputation of the neighbor, etc. For each one is bound by equal right to abstain from an unjust action, and to retract this action once posited, if it can be done; otherwise, he truly intends and perpetrates the evil effect which follows from it.

But if the damage cannot be impeded without one's own relatively grave inconvenience, there is a sufficient reason for permitting the evil effect. For judging about the relative gravity of the inconvenience, this must be compared with the damage which the neighbor is going to suffer.

481. (B) If someone culpably has posited the physical cause of some damage, and afterward has retracted the evil will before the whole damage is produced, he nevertheless is bound to restitution of the whole damage actually inflicted, if in fact he did not impede it; for he who voluntarily posited the physical cause of damage, however much he afterward grieves, is truly the efficacious and culpable cause of the damage, and is bound to repair it.

Thus he who has given poison to another, although afterward repentant he furnishes an antidote, but uselessly, truly is the cause of death; likewise he who, wishing to burn a house, has applied torches to the house, even if he tries to extinguish the fire, truly is the efficacious and free cause of the burning and is bound to restitution.

3. On Damaging Perpetrated with Error.

482. (A) The error concerns the gravity of the damage. He who by invincible error thinks that the damage which he inflicts is less than it truly is, more probably by natural law is bound only to restoring the part of the damage which he apprehended in his mind, unless however he apprehended the whole damage confusedly (e.g., a maidservant destroys or throws into the sea a jewel which she thinks to be worth ten coins, and which in fact is worth one hundred). For only that damage must be repaired which was voluntarily inflicted; but the excess of the damage was not voluntarily inflicted, since it was invincibly unknown. - But if the whole damage is apprehended confusedly (e.g., a homicide confusedly foresees various damages going to arise from this), the whole must be repaired, since it is sufficiently voluntary.

483. (B) The error concerns the injured person; - e.g., if someone burns the house of Peter, while he wishes to burn the house of Paul his enemy; or, intending to kill Caius, kills Titius. - A twofold opinion is given.

(a) Some, such as Lugo, Lacroix, and St. Alphonsus,[1] say that the damager in this case is not bound to restitution; for, in order that an action oblige to restitution, it is necessary that it be materially and at the same time formally injurious toward the injured person; but in the case, the action is materially injurious to Peter, and formally injurious to Paul, but not materially and at the same time

formally injurious to the same person; hence there is no obligation of restoring anything to Paul, who in fact is not injured, nor to Peter, who is injured apart from the intention.

[1] Lugo, disp. XVII, n. 78; Lacroix, lib. III, p. 2, n. 200; St. Alphonsus, n. 629.

(b) Yet the more common and truer opinion is that the damager is bound in this case to restitution; for he is truly the unjust, efficacious, and culpable cause of the damage inflicted: unjust indeed, since he knows very well that he has no right to burn this house or kill this man, whoever he may be; efficacious, since he in fact burns the house or kills the man; culpable, since, notwithstanding the error about the person, he knows and wills to destroy a house or life, which he is prohibited by strict justice from destroying; - therefore nothing is lacking for an injury, whether material or formal. - In truth the error is not about the substance, but about the accidental things of the damaging action: he indeed thinks that the man present is Caius, but at the same time he knows that the man here and now present is innocent, and he wills to kill this innocent man and in fact kills him. - Nor can it be said that he is so disposed that he would not elicit a sinful act if he knew that this man was not his enemy; for the question is not what he would do or not do, given the hypothesis, but what he wills to do and does; but he wills to kill and in fact kills an innocent man. Hence we think that this second opinion is to be followed in practice; the reason which the defenders of the first opinion bring forward is indeed subtle, but is opposed to the moral sense of men, and therefore is to be rejected.

484. Whatever may be the case, there are certain conclusions about which almost all grave theologians agree:

(a) Restitution must certainly be made when the reason for inflicting damage is not taken from the person as such, but from his office; e.g., if someone, intending to kill a priest from hatred of religion, strikes Titius the priest, thinking him to be Caius the priest; say the same of him who wished to kill a magistrate, a soldier.

(b) Restitution likewise certainly must be made when sufficient care has not been employed for avoiding the error: because then, at least confusedly, the damager foresaw the evil effect which followed from it.

(c) When the damager, from two things pertaining to the same owner, indeed wishes to destroy one, but through error destroys the other, he must restore at least the price of the thing which is of lesser value; for the injury, both material and formal, falls upon the same owner; but injury is inflicted upon the owner, not upon the things.[1]

[1] Therefore the contrary solution which Konings gives seems to us to be rejected, n. 758, 3, according to whom he is bound to nothing who, while he wishes to kill the goat of Maurus, kills the cow of the same man, which he was not seeing; he thinks this follows from the very rigor of principles; but is this not an evident sign that the principles themselves are contrary to justice, since from them a conclusion is inferred which upright men commonly reject as unjust?

4. On Doubt as Regards Damaging.

485. That doubt can precede or follow the damaging.

(A) If the doubt precedes the action, namely if someone doubts whether such an action can injure the right of another or not, he must investigate the matter, with that diligence namely which the gravity

of the matter demands; but if, after diligent examination, a positive and grave doubt perseveres, he must abstain from the probably harmful action; for justice forbids that damage be even probably inflicted upon another.

Thus a judge cannot pronounce sentence against someone if he seriously doubts whether this man is guilty; nor can a physician apply a remedy which he judges to be probably dangerous, when another certainly efficacious one is at hand; nor can a hunter discharge a gun at some object about which he doubts whether it is a man or a beast.[1]

[1] These cases differ altogether from the case of the indirect voluntary, namely when from a cause licit in itself a twofold effect can arise: one certain, namely one's own good or that of the neighbor, and the other doubtful, namely damage to a third person: for then the action is licit, provided the good effect compensates the evil.

486. (B) If the doubt follows the action, several hypotheses can be imagined: (a) if, after diligent examination, a probable doubt remains whether the cause of damage was unjustly posited, e.g., whether someone unjustly calumniated another, - or whether in fact some damage was inflicted upon the neighbor, e.g., whether the neighbor suffered damage in his business from the calumny or not; in both cases, strictly speaking, there is no obligation of restoring, because an obligation ought not to be imposed unless it is morally certain; but in the case the injury is doubtful. - Moreover, in doubt the condition of the possessor is better.

487. (b) If the damage is certain, and it is likewise certain that a sufficient cause of the damage was posited (e.g., calumny), but it is doubted whether this damage followed from this cause or from another, more probably he who posited the cause is bound to restitution, because the damage is deservedly presumed in fact to follow from this cause, until the contrary is proved; yet probably some hold that the obligation of restitution is not to be urged, because that the effect followed from the cause ought not to be presumed, but proved.

488. (c) If damage certainly has been inflicted, but there is a twofold cause, each of itself efficacious, and it is doubted from which one the effect followed (e.g., two men at the same time discharged a gun at the same victim), the matter is controverted; much more probably each is held in solidum to restitution; for each culpably posited a cause of itself efficacious for damage, and if uncertainty arises as regards the author of the damage, this must be attributed to the damagers themselves. - Yet St. Alphonsus probably holds (n. 657) that the obligation of restitution is strictly to be imposed upon no one, because no one is bound to despoil himself on account of a doubtful obligation. In practice, restitution is earnestly to be advised, if not urged.

5. On a Drunken Damager.

489. Here the principles concerning the indirect voluntary are to be applied:

(a) If the drunkenness was voluntary, and the damager, before he lost the use of reason, at least confusedly foresaw the damage which can follow from drunkenness, he is bound to restitution.

(b) But if the drunkenness was involuntary, or if he could not foresee the evil effect, he is excused from the burden of restitution in the forum of conscience; but if he is condemned by the judge to repair the damages on account of juridical fault, he must obey.

§ II. On the Unjust Possession of Another's Thing.

490. The second root of restitution is the unjust possession of another's thing; it is called unjust even as regards the possessor in good faith, because the obligation of restoring begins at that time when he becomes conscious of another's right, and therefore knows that another's thing can no longer be justly possessed by himself. - The possessor can be of good, bad, or doubtful faith, according as he inculpably, culpably, or with a doubtful conscience detains another's thing; these must be discussed separately, but first certain axioms, which occur more frequently in this matter, must be explained.

[1] St. Thomas, 2. 2., q. 62, a. 2-6; Soto, lib. IV, quaest. 6, a. 3-5; quaest. 7, a. 2; Sayrus, lib. X, tr. II, cap. 2-3; Lugo, disp. XVII; Billuart, diss. VIII, art. 9-11; St. Alphonsus, n. 607-625; Elbel-Bierbaum, P. VI, n. 28-91; Reuter, P. III, tr. III, cap. 2; Carriere, n. 1035-1102; Lehmk., n. 944-961; Baller. P., n. 415-439; Genicot, n. 523-534; Noldin, n. 434-449.

Certain Axioms Concerning the Possessor of Another's Thing Are Explained.

491. 1. The thing cries out to the owner, or toward the owner. This principle flows logically from the very right of dominion explained above (n. 74); namely a thing which legitimately pertains to someone is so connected to him that, if it has been separated from him, it tends to return to him, and thus as it were cries out to the owner. Therefore the owner, wherever he has found it, can by right and deservedly seize it; and consequently the holder, even one in good faith, must return it to the owner as soon as morally possible, unless by prescription or another just title he has made it his own.

2. The thing fructifies for the owner, that is, natural fruits pertain to the owner of the thing, just as the substance itself of the thing, as was explained above, n. 235-236; but industrial fruits, insofar and inasmuch as they proceed from the industry of another, are attributed to this person and not to the owner.

492. 3. A thing naturally perishes for the owner; namely, if a thing is naturally destroyed, without another's fault, the owner must bear the damage which follows from this; for when the thing, which was the foundation of dominion, has been removed, the right in that thing by that very fact perishes. Yet if the thing, although destroyed in itself, subsists in an equivalent, - insofar as, e.g., another accepted its price, or by using it spared his own goods, - it must equivalently be restored to the owner.

4. No one ought unjustly to become richer from another's thing; that is, no one ought to become richer from another's thing itself, or from all those things which naturally come forth from that thing, as is clear from the second axiom: the thing fructifies for the owner. But someone can become richer on the occasion of another's thing, insofar as, by using that thing, he produces something by his own industry, which is truly the fruit of his own labor, and therefore is legitimately acquired by him.

I. On the Possessor in Good Faith.

A possessor in good faith is he who, while detaining another's thing, inculpably thinks it to be his own, e.g., because he received the thing from him whom he judged to be the legitimate owner. His obligations can be weighed as regards the thing itself, - the fruits received from it, - and the expenses made for it.

1. On the Obligation of the Possessor in Good Faith as Regards the Thing Itself.

493. The general principle is that the possessor in good faith is bound to restitution: 1. as often as he is conscious that he detains another's thing without a legitimate cause; 2. as often as he has become richer from another's thing.

The reason for the former is that the thing cries out to the owner; therefore as soon as the possessor knows that some thing is not his, but another's, and moreover that there is no legitimate reason for retaining it, he cannot keep it without violating the rights of another.

The reason for the latter is taken from the fact that the thing fructifies for the owner; therefore if the possessor has become richer from the thing of another, e.g., by sparing his own goods while he consumed another's goods, he cannot retain this increase for himself, but must hand it over to the owner, to whom in fact it pertains as the equivalent of the thing consumed.

494. Practical applications. For explaining the general principle more fully, a threefold hypothesis can be imagined, according as the thing was possessed by one only, - or by several who transmitted it by onerous title, - or by gratuitous title.

First hypothesis: There is only one possessor, who has not transmitted the thing to others. (A) As long as the possessor of another's thing remains in good faith, he can use it as if it were his own; and, when the time required for prescription has elapsed, he acquires dominion over it.

(B) As soon as he discovers that the thing possessed by him is another's, he is bound to restore it to the owner, or at least to warn the owner that he should remove it at his own expense. For the thing cries out to the owner; hence another cannot retain it without injustice. Moreover, no one ought unjustly to become richer from another's thing; but if the possessor were not bound to return another's thing as soon as morally possible, he would unjustly become richer from another's thing by retaining what is not his own.

Hence, even if he bought another's thing, he must restore it, and indeed without compensation, unless civil law has disposed otherwise;[1] but he has recourse against the seller, from whom he can reclaim the price paid: for the sale was null, since the seller sold a thing not his own. - He is bound to return the same thing individually, if he still has it, since the thing itself cries out to the owner, nor can the owner be compelled to sell or exchange this thing.

[1] In France, if the thing was bought at a fair, by public sale, or from a merchant selling things of the same species, the owner must refund the price to the possessor. Cf. *Cod. civ.*, a. 2280, in *Supplement.*, p. 61*.

(C) If another's thing has perished, or has been consumed during good faith, the possessor by natural law is bound to nothing; unless however he has become richer from it, e.g., by sparing his own

goods: for then he must restore to the owner that in which he became richer. For, on the one hand, the thing perishes for the owner; and therefore the possessor in good faith, who did not become richer from it, is not bound to restitution by reason of retention, since he does not retain the thing; nor by reason of damaging, since he is not the culpable cause of damage. But if he has become richer from it, then the thing exists, if not in itself, at least in an equivalent; and therefore he is bound to render that back.

495. Second hypothesis: the thing has passed from one to another, or even to several, and indeed by onerous title, through sale. - Either there is place for eviction, or not.

(A) If there is place for eviction,[1] i.e., if the thing still exists, and the owner demands it from the last holder, either judicially or privately, and the holder has no means of defending himself from eviction, the last holder is bound to return the thing to the owner by force of the principle "the thing cries out to the owner"; but the last holder has recourse against his seller, who, by force of the contract of purchase, at least implicitly promises to compensate the buyer if there is place for eviction, as is said below. Likewise the last seller has recourse against him from whom he bought the thing, and so thereafter until one arrives at him who had received the thing by gratuitous title, or at the thief himself.

[1] Eviction is a legal act by which the buyer is disturbed from the possession of the thing bought, because it is vindicated by the true owner (below n. 762).

The same seems to be said if the last holder has spontaneously restored the thing to the owner; but if he did this without consulting the seller, in certain regions he cannot legally demand the price of the thing from the seller, because by having recourse to the seller he often could have defended himself from eviction; this is explained more fully where sale is treated.

496. (B) If there is no place for eviction, - because, namely, the thing was consumed, or perished by a fortuitous event, - the first seller is bound to refund to the owner the price of the thing, insofar as he became richer from it; but the other possessors are bound to nothing, because they were in no way made richer from another's thing.[2]

[2] If by selling more dearly than they had bought they have gained something, this proceeds from their industry, not from the thing itself; unless however the thing itself increased (because, e.g., a foal grew): then the increase is a fruit, concerning which we shall treat below.

497. Third hypothesis: the thing was transmitted from one to another by gratuitous title, or through donation. Then the first possessor, who in good faith donated another's thing, is bound to nothing, since he was not made richer from another's thing; the same must be said of intermediate possessors, who did not detain the thing; but the last possessor, who received the thing by donation, must return it to the owner, if it still exists; otherwise, he is bound to hand over an equivalent thing, insofar as he became richer; hence he is bound to nothing if he was not made richer from it.

498. Corollary. If someone in good faith bought a stolen thing, and knows that it is stolen before the time of prescription has elapsed, can he return it to the thief, in order to recover the price?

(a) If the owner has sought his thing before it is returned to the thief, the buyer is bound to restore it; for the thing cries out to the owner; but he himself has recourse against the thief.

(b) If the thing bought has not yet been handed over by the thief, the buyer can rescind the contract and leave the thing to the thief.

(c) If the owner has not yet sought his thing, it is controverted among theologians: some say that the thing must be returned to the owner, but not to the thief, because the thing cries out to the owner; others assert, with sufficient probability, that it can be returned to the thief, because the contract, on account of fraud or error, is rescindable, and moreover no one is bound to harm himself in order to benefit another. Hence in practice he who has followed this opinion cannot be compelled to restitution; but from charity the buyer is bound to warn the owner, as often as this can be done without inconvenience, so that the owner may be able to recover his thing from the thief.

(d) But if the thief does not wish to rescind the contract and return the price, the buyer cannot consume the thing or sell it to another, but is bound to restore it to the owner, even if he is going to receive no compensation from him, because the thing cries out to the owner; yet he has recourse against the thief.

2. On the Rights and Obligations of the Possessor in Good Faith as Regards Fruits.

499. (A) By natural law: (a) Industrial fruits, which namely are acquired on the occasion of the thing by the possessor's own labor, can be retained by the possessor in good faith: for each one legitimately makes his own the fruits of his own labor.

Hence he who, in good faith by trading with another's money, acquired great riches, is not bound to restore these to the owner, but only the usual increase of the money; likewise he who painted a picture of great price with another's brush and another's colors is not bound to restore it to the owner of the brush, but only to give compensation for the use of another's material.

500. (b) But natural fruits must be restored to the owner, provided they exist in themselves or in an equivalent, and have not been prescribed, after however the expenses which were necessary for collecting or preserving them have been deducted; for the thing fructifies for the owner.

The same must be said of civil fruits, which arise from the use of the thing, such as income from the renting of a house or from a loan, etc. Some, especially among the older theologians, except the increase from a loan, because it cannot be called a natural fruit; nevertheless this is commonly rejected today: for, in the present state of affairs, legal increase is deservedly counted among natural fruits, since it is taken not from the industry of the possessor, but from the thing itself.

It was said: provided they exist... for if they have been consumed without the possessor having become richer from them, by natural law he is not bound to pay the price, as was explained above; - after the expenses have been deducted, for he who enjoys the advantages must sustain the burdens.

501. (c) As regards mixed fruits, which arise partly from industry and partly from the thing, they must be divided between the owner and the possessor according to the estimation of a prudent and honorable man; for in that part in which they are natural, they belong to the owner; and in

that part in which they are industrial, to the possessor. Thus, e.g., as regards crops, the possessor can collect them, after the usual price for the lease of the fields has been paid.

502. Corollary. If someone in good faith bought a stolen thing at too cheap a price and sold the same more dearly, an increase of this kind can be regarded as an industrial fruit, if it can be attributed to the labor and skill of the possessor; as a natural fruit, if it proceeds from the thing itself, e.g., if wheat becomes dearer because of scarcity; as a mixed fruit, if it arises partly from industry, partly from the thing itself.

(B) By French civil law (which also prevails in several other regions), a possessor in good faith makes his own all fruits already received.[1] - This provision more probably has force in conscience: for the right belongs to the civil authority of transferring dominion when a reason of the public good is present; and this is verified in the case, since the law tends to avoid lawsuits and lest the possessor in good faith suffer damage from an unexpected restitution.

[1] *Cod. civ.*, art. 546-549, 585-586, in *Supplemento*, p. 11* and 51*; cf. Planiol, I, n. 909-915.

3. On the Same Person's Rights and Obligations as Regards Expenses.

503. Expenses which are made for the preservation or increase of a thing are usufructuary or extraordinary. - The former are those which are necessary for receiving fruits; but where the possessor does not keep the fruits, e.g., in the United States of America, he has the right of obtaining compensation for expenses of this kind: for the owner cannot legitimately receive the fruits unless the expenses have been deducted.

Extraordinary expenses are of three kinds: necessary, without which the thing would have perished or would have become worse (e.g., those which are made lest rain invade a house); useful, which increase the value of the thing, as are plantations, buildings, etc.; merely voluptuary, which are made for the sake of ornament, e.g., by adorning walls with paintings, without the value of the thing being increased.

504. (A) By natural law, the owner must compensate necessary expenses, indeed also useful ones, at least insofar as they increase the saleable value of the thing; otherwise he becomes richer from another's thing, namely from the money which the possessor paid for preserving or increasing the value of the thing.

As regards voluptuary expenses, which do not increase the price of the thing, strictly speaking the owner is not bound to refund them to the possessor; but if ornaments of this kind can be removed without detriment to the thing, the possessor has the right of taking them away with him.

(B) But civil law concerning this matter is diverse among various Nations. In France, the owner must refund to the possessor, even one in bad faith, necessary or useful expenses;[1] concerning voluptuary expenses, it is established that they must be compensated by the seller in bad faith.[2]

[1] *Cod. civ.*, art. 1381; cf. art. 555, in *Supplement.*, p. 52*.

[2] *Cod. civ.*, a. 1635, in *Supplement.*, p. 148*.

II. On the Possessor in Bad Faith.

505. A possessor in bad faith is he who culpably detains another's thing. He is bound to restitution by a twofold title, insofar as he is the unjust possessor of another's thing, and insofar as he is a damager; wherefore he must not only restore the thing itself, but also compensate all damages which followed from the unjust detention of the thing.

1. On His Obligations as Regards the Thing Itself.

506. (A) As an unjust possessor of another's thing, he must as soon as morally possible restore to the owner the thing itself, if he has it, or an equivalent thing; otherwise he would be richer from another's thing.

(B) As an unjust damager, he is bound to furnish the owner unharmed, by repairing all damages which at least confusedly he foresaw as going to follow from the unjust retention.

Hence he must compensate a thing consumed, even if he did not become richer from it; and if the thing perished, even by a fortuitous event, he is bound to restore its price, at least generally, namely as often as it would not have perished in the possession of the owner himself. Likewise if the thing became worse, while it would have remained intact with the owner, he must compensate that damage. For in all these cases he truly is the cause why the owner suffered these damages.

507. Corollary. But what if the thing would have perished in the possession of the owner himself? - A distinction must be made: (a) if it would have perished morally at the same time and by the same event as it perished with the thief (e.g., by the same fire or shipwreck, or from an intrinsic defect of the thing), more probably the thief is not bound by natural law to restitution, because he is not the efficacious cause of the damage. The same probably can be said if the thing would have perished at the same time, although not by the same event (e.g., it perished by fire at the thief's place, while it would have perished by water on the same day at the owner's): for the reason is the same.

(b) But if the thing would not have perished morally at the same time, the thief is bound to restitution: for then the thing, for at least some time, was unjustly retained by the thief; e.g., if wine rescued from a fire is drunk, its price must be refunded. - Yet I said at the same moral time, because if it were certainly foreseen that the thing was soon going to perish, there would be no strict obligation of restoring: for a thing soon and certainly going to perish is scarcely of any value.

By civil law, prevailing in France[1] and many other Nations, a possessor in bad faith is bound to restitution, in whatever way the thing perished in his hands. Yet this provision, insofar as it differs from natural law, can be regarded as penal, and therefore does not oblige before, but only after, the sentence of the judge.

[1] *Cod. civ.*, art. 1302, in *Supplement.*, p. 89*.

2. On His Obligations as Regards Fruits.

508. By natural law, and also by civil law prevailing among most Nations, he is bound to restore: (a) all fruits received from another's thing, even if the owner would not have received them, because the thing fructifies for the owner; even consumed fruits, although he has not become richer from them, because he must repair all damages unjustly inflicted; (b) all fruits which the

owner would legitimately have received, although the possessor himself did not receive them: e.g., if the owner, as endowed with very great skill, is accustomed to make twenty percent from business, and by theft was impeded from making this gain, the thief is bound to pay this; otherwise he does not compensate the damages unjustly inflicted; (c) fruits received by those to whom the thing passed, if these have not restored; for with them he is bound in solidum to repair all damages following from the unjust occupation of the thing.

Yet Lugo rightly notes here:[2] "As often as the question concerns restitution of profit ceasing, or of damage arising, the general rule handed down by all is that restitution must be made not in full, but according to the greater or lesser certainty of such profit, or of avoiding such damage, namely as much as that uncertain hope could be worth, with attention to all those things by which the effect could have been impeded."

[2] Lugo, disp. XVIII, n. 133.

509. (d) But industrial fruits, received not from the thing, but on the occasion of it, pertain to the possessor; hence, if a thief or depositary has carried on business with money taken away or received, he must restore the money and legal increase, or the profit which the owner would have made, but not the increase owed to his own labor.

510. Corollary. If a thing, during the time of unjust detention, had various values, is the unjust possessor bound to restore the highest value? - The principle is that the highest value must be restored: (a) as often as the owner is unjustly deprived of that increase, e.g., because, since he himself is vigilant, he would have sold the thing at the time of the highest price, - or because he was compelled to buy an equivalent thing at a time when it was sold more dearly; (b) as often as the unjust possessor would otherwise become richer, because, e.g., the increase of the thing is owed to him, as if a calf grew: for the thing grows for the owner.

But in practice it is often difficult to determine whether and when the aforesaid conditions are verified; if the matter remains doubtful, only compensation of the value which the thing had at the time of the theft is to be urged.

3. On the Same Person's Obligations as Regards Expenses.

511. By natural law, a possessor in bad faith, while he restores the thing and the fruits, can deduct the expenses which he made, both necessary and useful, which truly increased the value of the thing; for otherwise the owner would become richer from another's thing. But he cannot deduct merely voluptuary expenses; yet ornaments which, the substance of the thing being preserved, can be removed, he can retain for himself.[1]

[1] Thus also from French civil law; cf. *Cod. civ.*, a. 1381; but not from English or American law, according to which the owner is not bound to refund expenses made by a possessor in bad faith.

III. On the Possessor in Doubtful Faith.

512. A possessor in doubtful faith is he who from a grave and probable reason doubts whether the thing which he detains is his own or another's; hence a merely negative or altogether light

reason does not suffice for this. - When someone began to possess a thing in good faith, and afterward a doubt arose, the doubtful faith is called supervening; if the doubt preceded the very occupation, it is called antecedent doubtful faith.

513. 1. In the case of supervening doubtful faith, these are the duties of the possessor:

(A) Once doubt has arisen, he must diligently investigate the truth, and indeed with that diligence which corresponds to the value of the thing and the gravity of the doubt; otherwise he would deservedly be held as a possessor in bad faith. Meanwhile he cannot sell or consume the thing, unless he is prepared to render an equivalent to the owner.

(B) After diligent inquiry has been made: (a) if it is morally certain that the thing is another's, he must restore the thing and the fruits, as was said above concerning the possessor in good faith; (b) if the doubt perseveres, more probably he can retain the thing, because in doubt the condition of the possessor is better. Hence he can consume the thing or use it, provided he is prepared to render the thing or its price to the owner, if he appears before the time of prescription has elapsed; indeed he can sell the thing, provided he warns the buyer about the doubt, lest the buyer be deceived. Notwithstanding the doubt, he can prescribe at the opportune time.

514. 2. In the case of antecedent doubtful faith, the possessor likewise must diligently investigate the matter; but if the doubt remains, a threefold hypothesis can be imagined: -

(a) If someone has taken a thing away from a possessor, doubting whether he has a right to do this (e.g., probably judging that he has a right to part of an inheritance, he appropriated this to himself without recourse to the judge), he is equated with a possessor in bad faith; for in doubt the condition of the possessor is better.

(b) But he who acquired a thing by purchase, donation, or another legitimate title, doubting whether the seller or donor is truly the owner (e.g., he buys jewels at so low a price that he can deservedly suspect the thing to be stolen), more probably must restore, according to the proportional part of the doubt, to the owner, if he can be found, or to a pious cause; for he cannot retain the whole, because he began possession without good faith; nor however is he bound to render the whole, because it is not certain that the thing is another's. - But if he bought or accepted the thing with the intention of returning it to the owner as soon as the latter can be found, he is equated with a possessor in good faith, and can detain the thing until the owner appears.

(c) If someone occupies a thing occupied here and now by no one, doubting whether this is a thing of no one or not, whether it was lost or abandoned, he cannot retain it except conditionally, that is, with the intention of making inquiry and returning it to the owner, if the latter is found, as was said concerning lost things.

§ III. On Cooperators in Damage.

515. Not only those who principally inflict damage are bound to restitution, but also unjust cooperators, namely all those who truly have influence with him in causing the damage.

[1] St. Thomas, 2. 2., q. 62, a. 7; Soto, lib. IV, q. 7, a. 3; Sayrus, lib. X, tr. II, cap. 4; Lugo, disp. XIX; Billuart, diss. VIII, art. 13; St. Alphonsus, n. 557-581; Carriere, n. 1162-1233; Ball. P., n. 354-396; Lehmk., n. 1000-1018; Noldin, n. 467-489.

The general principle is that cooperators are bound to the reparation of all and only the damage of which they were the unjust, efficacious, and culpable cause, as is clear from what was said above, n. 477. - We shall inquire two things: 1. which cooperators are bound to restitution; 2. and how?

I. Which Cooperators Are Bound to Restitution?

516. Nine are commonly enumerated, comprehended in these verses:

Command, counsel, consent, flatterer, refuge,

Participant, silent, not opposing, not revealing.

Of these the first six are called positive, because they concur by action in inflicting damage; the latter three are called negative, because they concur in it by omission of an action owed from justice. - Concerning each we shall explain whether and by what reason they are bound to restitution.[2]

[2] St. Thomas (l. c.) briefly contracts this as follows: "It must however be known that five of the preceding always oblige to restitution: first, command, because he who commands is the principal mover, whence he is principally bound to restore; second, consent, in that, namely, without which robbery cannot be done; third, refuge, when namely someone is a receiver of robbers and furnishes patronage to them; fourth, participation, when namely someone participates in the crime of robbery and in the booty; fifth, he is bound who does not oppose, when he is bound to oppose... But in the other enumerated cases someone is not always obliged to restore: for counsel, or flattery, or something of this kind, is not always the efficacious cause of the ruin. Hence only then is the counselor, or flatterer, that is, adulator, bound to restitution, when it can probably be estimated that the unjust taking followed from causes of this kind."

1. On the One Mandating or Commanding.

517. (A) Notion. In general, one mandating is said to be he who entrusts to another a business to be carried out in his own name; but in our matter he is one who induces another to inflict damage upon the neighbor in his own name; if the one mandating is a superior, who has the power to command, he is called one commanding. - And this indeed can be done in a twofold way: explicitly, namely by command, threats, prayers, hope of reward, or another act by which another is positively moved to harm the neighbor; implicitly, if by deeds or words he signifies to a subject that damage inflicted on another will be pleasing to himself; e.g., when Henry II, king of England, was often complaining that he had no peace with Thomas, Bishop of Canterbury, so that the courtiers understood that they would do something pleasing to the king if they took Thomas out of the midst.[1] - But he is not judged one mandating who only ratifies damage already previously inflicted in his name.

[1] *Breviarium Rom.*, Winter Part, On the feast of St. Thomas, lessons 5-6.

518. (B) Obligations of the one mandating toward the one damaged.

(a) The one mandating is bound to repair all damages which another, by force of the mandate, inflicted upon the neighbor; and all those things which are morally connected with the execution of the mandate, namely those which at least confusedly were foreseen, after all circumstances have been

carefully weighed. For he who mandates that some damage be done in his name perpetrates it through another; but he who acts through another is judged to act through himself, and therefore is bound to repair this damage.

I said: by force of the mandate; hence if the mandatary transgressed the limits of the mandate, so that this could not have been foreseen, the one mandating is not bound to repair these further damages, nor therefore is he bound concerning damages which the mandatary inflicted from an error which could easily have been avoided.

(b) If the one mandating revoked the mandate, and this revocation became known to the mandatary before the damage was inflicted, he is not bound to restitution, provided he is only one mandating and not one counseling (below, n. 523); because when such a revocation is known, the mandate is now extinguished, and if the mandatary inflicts damage, it is perpetrated in his own name. - But, if the revocation did not become known, the damage truly follows from the mandate.

519. (C) Obligations of the one mandating toward the mandatary. As regards damages which the mandatary himself suffers, the one mandating is bound to repair them if by force, fear, fraud, or another unjust mode he compelled the mandatary to do this, or also if he expressly obligated himself to furnish such indemnity; in the former case he truly is the cause of this damage; in the latter he is bound to reparation by force of contract; - otherwise, the one mandating is not bound: for he who spontaneously, or for an agreed reward, undertakes some business to be carried out, assumes upon himself the dangers of the execution.

2. On the One Counseling.

520. (A) Notion. One counseling is he who, by showing motive or means, or by persuasion, induces another to inflict damage upon the neighbor; he is distinguished from one mandating, because he does not move another to act in his own name.

Hence counsel can be given especially in three ways: (a) by proposing motives from which it may appear that the thing is licit, or honorable, or useful, or even necessary; (b) by indicating means by which damage can be inflicted, by which, e.g., poison can be made or administered without danger, - or such a house invaded; (c) by using persuasion, e.g., by exhortation, prayers, blandishments, promises, inducing another to harm the neighbor. - Under another respect, especially a twofold counsel can be given: doctrinal, by which it is declared that such an action is evil or good, valid or invalid, etc.; impulsive, by which, abstracting from the question of validity or liceity, another is moved to inflicting damage.

521. (B) Obligations of the one counseling in the case of impulsive counsel. The general principle is that the one counseling is bound to restitution of that damage which he foresaw as going to follow efficaciously from his wicked counsel. It is clear from what has already been said; for then he is the unjust, efficacious, and culpable cause of that damage. - If two at the same time have furnished unjust counsel to the same person, each is bound to restitution, because each had efficacious influence in the damage.

522. Applications. (a) If unjust counsel is given to one who is already truly determined to inflict evil, there is no obligation of restoring; because in this case the counsel was not the efficacious

cause of the damage.

(b) If another is already determined to inflict damage, and the one counseling persuaded him only as to the mode of doing the thing, or other circumstances of time, place, etc., the one counseling is not bound to restitution, unless accidentally by such counsel he increased the damage, or was the cause of the whole damage; e.g., if by persuading as to the mode he persuaded him to greater damage, he is bound concerning this excess; if he persuaded that the damage should be inflicted sooner, so that the damage would have been impeded if longer delay had been awaited, he is bound to repair the whole damage.

(c) He who counsels a lesser evil to one who is already determined to inflict a greater is not bound to restitution, if the lesser damage is inflicted upon the same person; for in this case he is not the efficacious cause of any damage. But if he counsels that damage be inflicted upon another determinate person, according to the common opinion he must restore, since he truly is the cause of the lesser damage inflicted upon such a determinate person. Yet some say that, even in this case, no place is given to restitution, because, they say, counsel of this kind is in conformity with charity; moreover he who suffers the lesser damage is not reasonably unwilling toward the one counseling, but only toward the damager. - This argument seems weak; for, if the counsel had not been given, damage would not have been inflicted upon this determinate person; but this person is not bound to yield his own right in order to avoid another's greater damage. Hence in practice the former opinion seems to us to be followed.

523. Corollary. He who revokes counsel given before the damage is inflicted: (a) is not bound to restitution, if the counsel was simple, or bare, namely founded upon no motive, because by revocation the influence of the counsel is removed; (b) but more probably he is bound when the counsel was supported by reasons, if by contrary motives he could not change the mind of the executor; for the reasons previously alleged still subsist, and efficaciously act upon the mind of the other. This is especially true and commonly admitted if the one counseling made known to the damager the mode of perpetrating the damage, without knowledge of which the injury could not have been committed, e.g., by teaching the secret mode of opening doors; or furnished means of inflicting the damage.

Nevertheless some probably hold that the one counseling is not bound to restitution, even when he alleged motives, provided in the retraction he brought forward other motives equally efficacious; for if the executor does not wish to yield, the damage must be attributed to his malice, not to the counsel of another. - Besides, according to all, if the one counseling could not turn the executor away from the unjust purpose, from justice he is bound to warn the owner that he guard himself.

524. (C) Obligations of the one counseling in the case of doctrinal counsel. (a) He who by force of his office, as a confessor, advocate, physician, gave harmful counsel, whether from vincible ignorance or from evil intention, is bound to compensate the damages following from it, whether to the one seeking counsel or to a third party; for he who seeks counsel from one who is in office has a strict right not to be deceived by the culpable lack of skill or malice of the one counseling; and therefore the one counseling in this case directly violates the right of him who seeks counsel, and indirectly of those who contract with him.

525. (b) But he who gives counsel, not from office, is generally excused from restitution for the damage which the one seeking counsel suffered, unless however he deceitfully pretended skill; for, the case of fraud being excluded, he who seeks such counsel from an unskilled person and follows it spontaneously exposes himself to the danger of damage, and ought to ascribe to himself the damage which he suffered.

Yet one furnishing wicked counsel is bound to repair damage inflicted upon an innocent third party, provided he foresaw this at least confusedly.

(c) He who gave harmful counsel from ignorance or negligence, without grave fault, certainly from charity and more probably from justice is bound to retract it, provided he can do this without grave inconvenience; if he neglected this, he is bound to restitution. This is clear from what was said above, n. 480.

3. On the Flatterer.

526. The flatterer, or adulator, must be equated with one counseling; for he is one who by praising or blaming another incites him to inflict damage upon a third party; and therefore he is bound to restitution in the same way and under the same conditions as the one counseling. - But if he approves damage already inflicted, of itself he is not bound to reparation; otherwise, however, if this approval induces another to new injuries, or efficaciously impedes him from repairing an injury.

4. On the One Consenting.

527. He is called one consenting who by external approval, by vote, or by sentence truly cooperates in damage.[1] But a vote can be twofold: consultative and decretory; here the question concerns a decretory vote, which has the force of precept or law: the former is referred to counsel. - Thus, senators, deputies, and others who by their vote establish an unjust law; judges or jurors who pronounce an unjust sentence.

[1] Therefore here the question is not about any consent whatever furnished to an unjust thing, but about that which is the efficacious cause of the damage.

Now those consenting are bound to restitution as often as they have efficaciously and culpably violated the strict right of another. The reason is that, by making an unjust law or sentence, they concur in the damage inflicted in almost the same way as those mandating.

528. But the question is when those consenting can be judged the efficacious cause of the damage. Now:

(A) If all at the same time cast an unjust vote, whether by secret ballots, or by rising, etc., all equally concur in the damage, and all are bound to restitution.

(B) The same must be said of those who cast unjust votes from mutual conspiracy, because by a common vote they concur in the damage.

(C) If votes are given successively and by living voice: (a) certainly the first who emit votes are bound to restitution until the number necessary for establishing the law is completed, even if they foresee

that others who will consent will not be lacking; for they truly have influence in the law and therefore in the damage; - (b) as regards those who, after the sufficient number has been completed, give votes, a distinction must be made: if the votes are revocable, they are bound to restitution, because the damage is not consummated, and therefore even the last truly cooperate in it; but if the votes are irrevocable, the damage is now complete, and therefore the last probably and speculatively are not bound to restitution, because they are not the efficacious cause of the damage. But in practice, at least for the most part, all the suffrages have influence upon the effect by way of one thing, insofar as they add strength to the executors of the law and render its revocation more difficult; wherefore generally they are bound to reparation.

(D) If before the law or sentence is made, the unjust vote is efficaciously revoked, no place is given to restitution, because now no efficacious cooperation is furnished.

(E) But those who give a vote for a thing less just, not intrinsically evil, when this is the only means of averting a greater evil, do not sin, nor therefore are they bound to restitution.[1]

[1] Lehmk., n. 800; Genicot, n. 540; Noldin, n. 481.

529. Corollaries. (A) In modern societies, in which matters of the greatest moment are determined by the vote of senators and deputies, the duty is incumbent upon all these of emitting votes at the opportune time, so that they may promote the good of the commonwealth and avert the evils which wicked citizens are contriving: therefore not only do those sin gravely who cast a vote for an unjust law, but also those who, without just cause, from grave negligence or fear of displeasing the Government, abstain from giving votes, or are absent at the time of voting, when they can foresee that by silence of this kind grave damage is threatening the public good or some body of citizens; indeed they are bound to restitution, as often as by this way of acting they can be called the efficacious cause of some injustice.

530. (B) The same duty is likewise incumbent upon those electors who choose senators or deputies, as often as it is foreseen that unjust laws are going to be proposed and established; and this indeed today for the most part ought to be foreseen; for there are many who are attempting utterly to overthrow the religious and social order; and unless upright men perform their duty, form political associations, and at the opportune time elect honorable deputies, soon injustice will prevail everywhere. Therefore citizens who enjoy the right of suffrage, and do not use it because of negligence or vain fear, today of themselves sin gravely, because negatively indeed, but efficaciously, they concur in establishing unjust laws.[1] Not a few are subjectively excused from grave sin, because they do not think about the consequences of their negligence; but upon priests, and laymen who understand the matter better, the duty is incumbent of instructing them, prudently indeed, but unceasingly, so that good citizens, with forces united and federated, may be able to break the audacity and injustice of wicked men.

[1] Concerning this see *Ami du Clerge*, *Le peche electoral*, t. XXV, 1903, p. 979, and t. XXVI, 1904, p. 2.

5. On the Receiver.

531. The receiver, or one furnishing refuge, is he who furnishes refuge or security to an evildoer, as such, or receives and keeps the things taken away by him. - I said: as such, because if he

receives him not as an evildoer, but as a blood-relative, or friend, or by force of office (e.g., if the question concerns an innkeeper), and does not intend to furnish him aid, he is not properly a receiver.

Now the receiver is bound to restitution insofar as he makes the evildoer more secure in unjustly inflicting damage upon others, or is the cause why goods unjustly taken away are not restored.

532. Hence the following are obliged to restitution: (a) merchants and innkeepers who accept from children of families, servants, etc., money or things secretly taken away from parents or masters, because thus they favor thefts of this kind; (b) advocates who in a civil matter patronize manifestly unjust causes, or, in a criminal matter, an unjust accuser; but not those who, in a criminal trial, defend evildoers when these ought from the law itself to have a defender; (c) those who furnish help to a thief or another evildoer, by watching and warning if perhaps persons occur who are going to denounce or impede the crime; (d) tavern-keepers who receive thieves and conceal them lest they be seized.

6. On the Participant.

533. Notion. A participant can be twofold: in the booty and in the unjust action. If the former, he must restore that which he unjustly received, as will be said below concerning the possessor of another's thing; here we treat only of the participant in an unjust action.

Now cooperation of this kind is called formal, or intentional, if the one cooperating concurs both in the action and in the unjust intention; material, if he concurs only in the wicked action. Thus he who hands over the keys of a house to a thief so that the latter may more easily steal cooperates formally; but materially, if he does this only for this end, that he may avoid his own damage, death or a wound.

534. Principles. (A) He who formally cooperates with another in an unjust action, and indeed efficaciously, is bound to restitution: for then he is the unjust, efficacious, and culpable cause of the damage inflicted, since he intends to do injury and in fact does it.

The specific malice of cooperation is taken from the nature of the sin to which concurrence is furnished, and therefore in confession this sin must be declared.

535. (B) He who materially cooperates in a damaging action is excused from sin and from the obligation of restitution, provided the act is not intrinsically evil, and moreover there is a proportionate cause for cooperating. This is clear from what was said where cooperation in general was treated.

Hence it is not licit to participate immediately in the killing of an innocent man, since this action is intrinsically evil; - nor in his mutilation, except for preserving his life or health, from what was said above, n. 308.

It is more probably licit materially and immediately to cooperate in theft in order to avoid an evil of a higher order, e.g., death; for then the owner, if he were to oppose, would not be reasonably unwilling. - Indeed this is licit from a grave cause, if the one cooperating can and wishes to repair the damage

going to follow from his cooperation, - or if the damage is light, - or if equal damage would be inflicted even if cooperation were omitted: for in these cases he is not judged reasonably unwilling.

7. On Negative Cooperators.

536. (A) Notion. There are three negative cooperators: the silent, the one not opposing, the one not revealing. (a) The silent person is he who, before damage is inflicted, does not impede it, at least by warning, when he can and ought; e.g., the guard of a house who, when the thief arrives, does not cry out. (b) The one not opposing is he who, while evil is being inflicted, does not impede it, when he is bound to this, e.g., soldiers who do not prohibit an unjust aggressor from killing an innocent man. (c) The one not revealing is he who, after damage has been inflicted, does not denounce the damager, when he can and ought to furnish this; e.g., customs guards who say nothing about those who defraud taxes.

537. (B) General principle: Negative cooperators must restore when these two things concur: namely when 1. from justice (i.e., from office or from pact) they are bound to impede the damage; and 2. they can impede it without a graver inconvenience.

For, if they are bound not from justice, but only from charity or another virtue, they indeed sin against these virtues, but not against justice, and therefore they are not bound to restitution. - Now from justice those must impede damage who obligated themselves to this by some pact, or contract, whether explicit or implicit, or who undertook a function, or office, by force of which they are bound to prohibit damage: for there is then a quasi-contract.

Moreover all these are not judged to obligate themselves to impeding damage with the greatest inconvenience to themselves, e.g., with danger to life, unless the public good is in question, which sometimes demands the sacrifice of one's own life.

538. (C) Principal applications: - (a) A confessor who, even from grave negligence, neglects to warn the penitent about making restitution is not bound to restitution, unless his silence is equivalent to positive counsel, e.g., if the penitent asked the confessor to warn him concerning the duty of restoring; for the confessor, by force of his function, is indeed bound to provide for the spiritual good of the penitent, but not to guard against the temporal damage of others. - But if he knowingly gave a false response, he is bound to restitution as one counseling from office.[1]

[1] Concerning this the matter is treated more fully in the Treatise on Penance, n. 415-416.

539. (b) Parents, or superiors, who suffer damage to be inflicted upon the neighbor by children or subjects, must restore: when by their silence they moved the children or subjects to inflicting damage; or when the children are not yet masters of themselves. - Otherwise, by natural law, they are not bound to restitution; for from office they indeed have care of their own, but are not bound to protect the goods of others. But civil law proceeds further in many regions at least.

540. (c) The owner is bound to repair damage inflicted by animals of which he has ownership, or use, or custody, when it was caused by his grave negligence; for upon him is incumbent the

care of watching lest they harm others.

(d) Servants who are hired as guards of things, e.g., guards of houses, vineyards, and forests, are bound to repair damage inflicted upon those things which have been committed to their care; for by contract they obligated themselves to averting this damage. - As regards servants who did not explicitly undertake such a burden, it is controverted whether, by not impeding damages inflicted by strangers, they are bound to restitution; many indeed affirm, because, by entering the household, they are judged implicitly to undertake the obligation of defending domestic goods against strangers;[1] yet not a few authors, especially modern ones, probably deny this, because, according to our customs, servants obligate themselves in justice to nothing except faithfully carrying out the special function committed to them. - In practice, attention must be paid to the usage and customs of places, and also to the psychological dispositions of servants; nevertheless, according to all, from charity they are bound to impede this damage.

[1] It is said against strangers; for unless from special office they preside over the whole house, they are not judged to obligate themselves to protecting the goods of the master against other servants: for this would be too odious.

(e) Customs guards who from grave negligence do not collect taxes are bound to restitution, because by force of their function they must collect these at the opportune time, and denounce those defrauding them, unless the question concerns things of lesser moment, for which tribute is not usually rigorously exacted.

541. (f) On which occasion it is asked whether he is bound to restitution who received money from a thief in order not to denounce the guilty person. - If the question concerns him who is bound from office to denounce, he must restore to the injured owner, because he truly is an unjust cooperator; - the same must be said if the money accepted is stolen, because then he is a receiver; - outside these cases, it is controverted: some deny with Lugo,[2] because then charity indeed is injured, but not justice; others affirm,[3] because to receive money and be silent in this case is nothing other than to furnish help and security to the thief. We embrace this latter opinion as more probable, consonant with natural equity and the public good. But restitution must be made not to the thief, but to the injured owner or to the magistrates.

[2] Lugo, disp. XIX, n. 102; Genicot, n. 547.

[3] Crolly, t. III, n. 703.

II. On the Mode by Which Cooperators Must Restore.

542. Cooperators are often bound to restitution in solidum, insofar as the obligation is incumbent upon individual cooperators of repairing the whole damage which was inflicted by several. This obligation is absolute, if restitution must be made without recourse against the other accomplices; conditional, if one has a right of having recourse against the others.

543. (A) Principle: Individual cooperators are bound to restitution in solidum as often as they had influence upon the whole damage, so that the whole can morally be attributed to individuals: absolutely, if they are a principal cause; conditionally, if they are a secondary cause.

For each one is bound to repair the whole damage of which he was the unjust, efficacious, and culpable cause; but such is the case with those of whom we are treating, as is clear. - The whole difficulty is in defining who have influence upon the whole damage. - These are:

544. (a) Cooperators who act by a conspiracy properly so called, namely when individuals efficaciously impel the others to inflicting the whole damage by persuasion, counsels, etc.; e.g., robbers who enter upon a plan of plundering a house and mutually incite themselves to doing this. - But it is doubted whether the same must be said of those who by simultaneous action, but without mutual persuasion, inflict some damage in one and the same thing, e.g., burn the same house or sink a ship, when otherwise the cooperation of individuals is not necessary; many more probably affirm,[1] because morally the whole effect proceeds from individuals; yet not a few probably deny,[2] because individuals concur only partially in the damage, and therefore are bound only to repairing the part of the damage which they caused.

[1] Salmantic., *de Restit.*, cap. 1, n. 151; Soto, Bonacina, etc.

[2] Lugo, disp. XIX, n. 83; Sporer-Bierb., tr. IV, n. 351; St. Alphonsus, n. 579.

(b) Cooperators each of whom was a necessary cause for inflicting the whole damage; e.g., jurors who in England or the United States would condemn an innocent man, since the vote of each is necessary for obtaining the condemnation; two thieves unjustly carrying away another's thing, which one could not have carried away.

545. (c) Cooperators each of whom was a sufficient cause of the whole damage, e.g., two men at the same time discharging a gun at an innocent man, so that each inflicts a lethal wound; or two giving wicked counsel, when either one would have been sufficient for moving the agent to the damaging action.

(d) A damager who is the principal cause of the whole damage, as one mandating, or the thief who seeks other associates for carrying away a stolen thing.

546. Hence he who joins himself to others already determined to plunder a house, but so that his action is not necessary, is bound only to repairing the part of the damage which he himself inflicted; he who sets fire to buildings which others have already efficaciously set on fire is bound only to compensating the part of the damage which he himself caused; a soldier who in an unjust war inflicted damages with the rest of the army is bound only to repairing the part of the damage of which he himself was the author.

547. (B) On the order to be preserved among cooperators who are obliged in solidum. A distinction must be made between those who caused the damage in the same grade and those who caused it in a different grade.

1. If cooperators inflicted damage in the same grade and manner, e.g., if all were mandators, or counselors, having influence upon the agent in the same manner, individuals must restore equally; i.e., each is bound to his own part, and if one or another does not restore, the others must proportionately restore this part, with recourse preserved against him who paid nothing.

548. 2. If cooperators concurred in the damage in a different grade, they are bound in this order: (a) he who detains another's thing; (b) the one mandating; (c) those executing; (d) the other positive causes; (e) finally the negative causes; namely: -

(a) He who detains the thing in itself or in an equivalent, or unjustly consumed it; for the thing cries out to the owner, if it still exists; and, if it does not exist, he who before the others had profit from another's thing ought first to feel the burden of restitution; (b) the one mandating, who is the principal cause in relation to those executing; (c) those executing, because, after the one mandating, they had the principal parts; and if among them one was principal, because he himself gave the mandate to others, he is bound before the others; (d) the other positive causes, which are bound equally, provided they acted in almost equal manner and independently; (e) in the last place the negative causes, among whom that one will be bound first who was held by a stricter obligation of averting the damage.

549. (C) Corollaries. (a) If the principal cause has restored or obtained condonation from the owner, the secondary causes are bound to nothing. But if the owner has condoned one of the secondary causes, the principal cause is not thereby freed.

(b) If one of the secondary causes has restored, the principal cause is bound to restore to him.

And so, if the holder of another's thing has restored, the other cooperators are bound to nothing. - If the one mandating has restored, the holder must make restitution to him, and the rest are bound to nothing. - If the principal executor has restored, first the holder, and, in his absence, the one mandating, must furnish compensation to the principal executor. - If one of the positive causes has restored, first the holder, afterward the one mandating, third the principal executor, must restore the whole to him. - But if these refuse, the other equal causes must pay their own part to him.

(c) If one of the negative causes has restored, the holder, and in his absence the one mandating, afterward the executor, and at last the other positive cooperators must restore the whole to him; but if these are lacking, the negative causes are bound to pay their own part to him.

550. Things to be noted for practice. (a) If one of the secondary cooperators doubts, after inquiry has been made, whether the principal author has restored, he is not to be compelled to restitution, since the obligation of restoring cannot be imposed unless it is morally certain. - But if he doubts whether cooperators of the same grade have restored, it suffices that he restore his own part, for the same reason.

(b) Often it is expedient not to compel cooperators to restore the whole damage, even if they are held in solidum. For St. Alphonsus rightly says (n. 579): "Yet it must be noted that the uneducated, although they are held in solidum, rarely is it expedient to oblige them to the whole; since these persons with difficulty persuade themselves that they are held to restoring the part taken away by associates. Indeed it can sufficiently be presumed that the owners themselves, to whom restitution is owed, consent that they restore only the part taken away by them; since otherwise it is greatly to be feared that they will restore nothing, if they are obliged to the whole." Hence often the confessor will exhort the unjust cooperator to restore what he owes, according to the dictate of his conscience.

Art. II. On the Mode of Restoring.

551. Once the obligation of reparation has been posited, it remains to inquire concerning the mode by which restitution ought to be made. We shall speak: 1. of the circumstances of restitution in general; 2. of restitution as regards certain goods, concerning which a special difficulty occurs.

§ I. On the Circumstances of Restitution in General.

We shall weigh: 1. to whom; 2. in what place; 3. at what time; 4. in what manner restitution must be made.

[1] St. Thomas, 2. 2., q. 60, a. 5; Sayrus, lib. X, tr. V, cap. 9; Lugo, disp. XX; Lessius, lib. II, cap. 15; Billuart, diss. VIII, art. 14-19; St. Alphonsus, n. 676-695; Carriere, n. 1234-1266; Ball. P., n. 499-526; Noldin, n. 490-503.

I. To Whom Restitution Must Be Made.

552. General principle. Restitution is to be made to him whose rights have been injured, and, when he has died, to his heirs or those having his cause. - But, in order to elucidate the matter more, a threefold hypothesis can be imagined, according as the injured person is certainly known, - or uncertain, - or altogether unknown.

1. If the injured person is certainly known, restitution must be made to him who legitimately possessed the thing, as often as this can be done without great inconvenience; for the thing cries out to the owner, that is, not to him who has only naked ownership, but to the legitimate possessor. Thus if a thing was taken away from a depositary or lessee, it must be restored to him, and not to the naked proprietor, because the injury was done to him. - Yet, if a grave reason is present, restitution can be made to another; e.g., a thing stolen from a child of the family can be returned to his parents, if it is feared that it will be dissipated by him.

553. Corollaries. (a) If the injured person has died, restitution must be made to the heirs or to those having his cause.[1] - If the owner was compelled to make a cession of goods, restitution must be made not to him, but to the administrator of the goods, unless the owner is in grave necessity and has the right of retaining what is required for decent support, as will be said below where Contracts are treated.

[1] Hence restitution cannot be made to the poor when legitimate heirs are present; nor is it licit to spend money to be restored on Masses for the deceased, unless the will of the deceased or of the heirs can reasonably be presumed, as is clear from the decree of the Sacred Penitentiary, February 7, 1899, in *Ami du Clerge*, t. XXI, 1899, p. 415.

(b) If a community or society has been injured, restitution must be made to the administrators of this community. - Yet if the society of which there is question pursues an altogether wicked end, as a Masonic sect, restitution is not to be made to the society itself, but to its individual members, or, if this cannot be done, to the poor. But if the society is not essentially evil, although at times it expends money for evil uses, - as is a heretical sect, - restitution must be made to it; for it can possess legitimately, nor is it deprived of its right because of certain abuses in which it indulges.[2]

[2] Holy Office, September 21, 1842: "Whether a Christian faithful who knowingly and willingly destroyed and ruined the walls, doors, and furnishings of a temple, and on that account is seized by heathens, ought or can repair the damage, at least by another title? - Resp. He is held to restitution, by title of justice" (in Bucceroni, *Enchiridion*, n. 672).

(c) He who culpably burned an insured house must restore to the insurance company that which it paid to the owner, and to the owner the part of the damage which the company did not repair. - But if it becomes morally impossible to know which company suffered damage, on account of the pact which they call reinsurance (*reassurance*), restitution must be made to the poor or to pious causes.

554. 2. If it is doubted which person has been injured, first indeed inquiry must be made, and indeed with that diligence which is proportioned to the value of the thing; but, if the doubt remains, -

(A) If the doubt concerns few persons, - because, e.g., money found was lost by one of four or five persons, let the thing be divided among them in the better way in which this can be done.

(B) If it concerns many, let restitution be made to the injured persons, if this can morally be done, e.g., if merchants defrauded in the weight or quality of goods, let them increase the weight or furnish better quality when the injured buyers return; if this cannot be done, let restitution be made to the poor or to pious works, especially of that place where the injustice was committed; for in this case, the injured are judged to consent to this mode of restoring.

555. 3. When the injured person remains altogether unknown, after diligent inquiry has been carried out, a distinction must be made: (A) If the thing was acquired in good faith, it can be retained by the possessor by prescription as a lost thing (above, n. 229).

(B) But if in bad faith, it must be restored to the poor or to pious causes. All theologians admit this, although they dispute concerning the foundation of this obligation: some derive it from natural law, but others from ecclesiastical law.[1] We think that it flows from natural law, and was explicitly declared by ecclesiastical law. For natural law commands that, on account of the public good, no one become unjustly richer from another's thing; but if the possessor in bad faith retained the thing unjustly possessed, he would become richer from another's thing, and thus his injustice would patronize him; and therefore the public good would suffer, since from this evildoers would become bolder. - Moreover ecclesiastical law determined this as regards usuries and a simoniacal price; and theologians commonly extend it to all debts arising from delict.

[1] For Alexander III (*Decretal. Gregor.* XI, lib. V, tit. 19 *de Usuris*, c. 5, p. 812, ed. Friedberg) decrees that usurers are to be compelled to restore usuries "to those from whom they extorted them, or to their heirs, or, if these do not survive, to distribute them to the poor"; the same is elsewhere declared concerning simoniacs, and, by analogy, is extended to all who in bad faith detain another's thing.

556. Hence, in the restitution of uncertain debts, Pontiffs have sometimes granted condonation or reduction, from a grave cause, insofar as they are administrators of pious causes.

If the debtor himself is poor, he will be able to keep part of another's thing which is necessary for relieving his own poverty: for the one possessing is not excluded from the number of those to whom restitution can be made; nevertheless one must beware of illusions which easily occur when someone is judge in his own cause. If the unknown owner afterward appears, the possessor of another's thing has the rights and duties of a possessor in good faith, if he employed the required diligence for finding the owner; and therefore if he restored to the poor, he is bound to nothing further; - if he was

not diligent, he is held as a possessor in bad faith, and must compensate the damage inflicted upon the owner.

II. On the Place Where Restitution Must Be Made.

557. General principle. Restitution must be made there where the rights of the creditor are preserved, yet without a graver inconvenience of the debtor. Hence: -

1. A possessor in good faith is bound to restore the thing in the place where it is when he begins to know that the thing is not his own; nor is he bound to undergo the expenses or dangers of transmission; but it suffices that he make known to the absent owner that he is prepared to return the thing.

The reason is that the possessor in good faith is not bound to suffer detriment from another's thing. - Hence if the thing perishes while it is being transmitted, the possessor is not obliged to compensate the damage.

558. 2. A possessor in bad faith or an unjust damager must restore, at his own expense, in the place where the owner would have possessed the thing if it had not been taken away or destroyed, after however the expenses which the owner would have made in carrying the thing away have been deducted (by natural law). - For, as a damager, he is bound to repair the whole damage which the owner suffered.

(a) Yet if the expenses for conveying the thing to the owner would greatly surpass the value of the thing itself, it would suffice to transmit the price of the thing to the owner, unless the thing was most dear to the owner. - Today however, because of the ease of transport (*facilite de transports*), for the most part the thing itself can be sent back with small expenses.

559. (b) If the thing to be restored perishes by chance or by the fault of a third person before it reaches the owner, the unjust possessor must compensate the damage, but has recourse against him to whom the thing had been committed; for a debtor from delict must bear every damage even fortuitous, from what was said above, n. 506. - The case is excepted in which the owner or judge determined the messenger to whom the thing was to be entrusted: for then as soon as it has been handed over to the messenger, it becomes the creditor's, and, if it perishes, it perishes for him.

Wherefore many probably judge that he is immune from a new restitution who handed over the money to be restored to a confessor, with whom it perished by chance or by the fault of a third person; for the confessor can be held as a messenger chosen from the presumed consent of the creditor, since often restitution cannot be made safely by another way without danger of infamy, - and moreover the confessor from office is a trustworthy messenger. - Hence, in practice, he who restores in this way, and thinks that he has already satisfied his duty, is not to be compelled to a new restitution.

III. On the Time at Which Restitution Must Be Made.

560. Principle. Restitution must be made as soon as morally possible, unless a reasonable cause excuses, so that all damages following from culpable delay must be repaired. - For the owner has the right of possessing his own thing and of enjoying it; but he is deprived of both rights if restitution is too long deferred without cause.

(a) Therefore he sins gravely who without cause notably defers restitution in grave matter; and also he who, being able to restore the whole, wishes to restore only by parts; the sin will be venial if the delay is brief and does not inflict grave damage upon the creditor.

(b) If from culpable delay the owner suffers damages which could be foreseen, the unjust possessor, as a damager, must compensate them. Now damages commonly occurring in similar circumstances can be foreseen, but not extraordinary ones, unless the debtor who is in delay had been sufficiently warned.

(c) Those sin gravely who, without sufficient reason, defer restitution until death, not only because of the delay of restitution, but also because it is to be feared lest the heirs omit restitution. - Therefore the confessor must prudently exhort penitents that they themselves restore before death, insofar as this can be done; or at least employ efficacious means that restitution be made, e.g., by giving the money to a trustworthy person, who may diligently pay all debts.

IV. On the Mode of Restitution.

561. General principle. Restitution must be made in that mode by which violated justice is repaired to equality. - This is clear from the very notion of justice and of restitution.

It is explained: (a) Restitution generally can be made secretly and while the owner is unaware, unless scandal is to be repaired, so that in this way the reputation and honor of the one restoring may be spared.

(b) It can be made under the appearance of donation; or through labor spontaneously and gratuitously undertaken for the utility of the owner, or through thrift, or other means of this kind; especially if the question concerns those who can scarcely restore otherwise. - If it is made by way of donation, and the creditor, moved by this cause, repays another gift of the same value to the debtor, one must proceed in another way.

(c) The debtor, or damager, can restore either through himself or through another trustworthy person. Often the confessor is chosen by the penitent as a middle person; the confessor can accept this function, provided he acts prudently, lest he break the seal of confession; - e.g., he can restore through another priest as intermediary, by sending the money from another city, etc.; it is also expedient that the penitent be made certain that restitution has truly been made, so that every suspicion may be avoided.

562. 2. Corollaries. (A) If someone, forgetful of a debt, gratuitously gives something to the creditor, does he satisfy the obligation of restoring? - It is controverted:

(a) Some deny it; for the donation was made from the motive of benefiting, not from the motive of restoring. (b) Others more probably affirm it; for the donor, in this case, virtually and implicitly wishes to restore, because, since he is well disposed, he has the implicit will of restoring; so that he

would have had this will explicitly, if he had been conscious of his obligation. Hence in practice restitution is not to be urged in this case. - Indeed, if restitution is to be made to the poor, alms made after the obligation has been contracted can be held as restitution.

563. (B) In what way must restitution be made to the State or Municipality?

(a) If some mode is determined by law, this must be observed, insofar as it can be done.

(b) Otherwise, restitution can be made to the administrators of the State or Municipality, - or by destroying titles of debt issued by the State or Municipality (*rentes sur l'Etat, timbres, obligations des villes*), but not those which are issued by a private society. Some add that restitution can be made to those who have been unjustly despoiled of their goods by the civil power; but in this case, the injustice must be manifest; - or to the poor, because the obligation is incumbent upon political power of assisting them; nevertheless this does not seem probable; for generally the State satisfies this obligation in other ways, nor does it belong to private persons to dispose of public revenues by private authority.

§ II. On Restitution as Regards Certain Goods in Particular.

Here we shall explain how restitution must be made: 1. as regards damage in goods of the body; 2. as regards goods of the soul; 3. on account of impeded attainment of some good; 4. on account of defrauded taxes.

[1] Sayrus, lib. XI, cap. 1-10; Lugo, disp. XI-XV; Billuart, diss. X, art. 11; diss. XV, art. 3; St. Alphonsus, n. 626-675; Carriere, n. 1301-1430; Ball. P., n. 440-498; Marres, lib. II, n. 257-366.

I. On Restitution on Account of Damage in Goods of the Body.

The question can be weighed: 1. as regards homicide and wounding; 2. as regards duel; 3. as regards seduction; 4. as regards adultery.

1. On Account of Homicide and Wounding.

564. State of the question. (A) The obligation of restoring arises from homicide and wounding committed unjustly, efficaciously, and culpably. Hence he who kills or mutilates another for the sake of just defense, and with the moderation of blameless defense, is held to no restitution. But he who, in a case of legitimate defense, notably exceeded just moderation, according to some, is bound to restitution; according to others, probably he is not bound, because the unjust aggressor knowingly and willingly exposed himself to the danger of death, and ought to impute to himself his own death or wounding; for he who is unjustly attacked can scarcely think of the moderation of blameless defense, and almost always is in good faith.

(B) Damage from homicide or mutilation can be threefold: natural, namely the loss of life or members; spiritual, insofar as the one killed is deprived of the opportunity of doing penance and of the suffrages which by testament he could have procured for himself; temporal, which happens either to the one killed or mutilated himself, or to his family, e.g., expenses for treating the wound, ceasing profit on account of the death, illness, or mutilation of the injured person.

565. Now (a) natural damage cannot properly and directly be compensated in the same genus; and it is controverted whether indirectly and equivalently it must be compensated through a payment of money. Many modern authors probably say that no compensation is owed unless it is imposed by the judge, because none is possible, since life, integrity of members, and bodily health exceed every price. Yet we judge it more probable, with St. Thomas[1] and many other older theologians, that some compensation is owed even for natural damage to the injured person, but not to his family. "When that which has been taken away is not restorable through something equal, compensation such as is possible ought to be made, as when someone has taken a member from another, he ought to compensate him either in money or in some honor, the condition of each person being considered, according to the judgment of a good man." For although justice intends perfect equality, yet if this cannot be obtained, we ought to approach it insofar as can be done. Yet according to all, care must be taken lest such compensation be an incitement to crime, e.g., to fornication. - The same diversity of opinions prevails as often as restitution in the same genus of goods cannot be made.

[1] St. Thomas, 2. 2., q. 62, a. 2, ad 1.

(b) Spiritual damage can and must be compensated in the same genus, through prayers, Masses, and other spiritual works. According to not a few, this obligation arises from justice; according to others, from charity; let the confessor warn homicides about this matter.

(c) Therefore it remains to speak of temporal damage.

566. Principle: A homicide or mutilator is bound to repair all temporal damages which he at least confusedly foresaw as going to follow from his action. - For he truly is the unjust, efficacious, and culpable cause of these damages.

567. Corollaries. (A) This obligation is real, and therefore passes to the heirs, who nevertheless are not held beyond the forces of the inheritance.

(B) The principal damages are: expenses for the treatment of the wounded or killed person, - or for the funeral, namely insofar as they are greater than if the injured person had died at home; ceasing profit on account of the wound or death of the injured person, which must be estimated by the judgment of a prudent man, with all circumstances of person, age, office, labor, etc., considered.

But because it is difficult to define these altogether accurately, it is very expedient that a friendly composition or transaction be made.

(C) Restitution must be made primarily to the injured person himself, and, after his death, to his nearest heirs, namely parents, children, and wife, because, on account of the very strict bond by which they are united to him, they form one moral person with him. The obligation of restoring to these nearest heirs is certain if they were receiving support from him and do not otherwise have that by which they may sustain themselves. More probably and more commonly the same is said, against Lacroix[1] and a few others, in the case in which parents, wife, and children can easily provide for themselves; for even in this case they have suffered unjust damage.

[1] Lacroix, lib. III, P. II, *de Restitutione*, n. 309; St. Alphonsus, n. 631.

568. (D) It is controverted whether restitution must be made to the remaining heirs, even blood-relatives, and to creditors of the deceased, who incur damage from this. These are the things which seem more probable to us:

(a) It is not clearly established, and therefore the obligation of restoring is not to be urged for non-necessary heirs, whom namely the deceased was not bound to provide for; for it is uncertain whether the deceased had the will of enriching them, and therefore if they suffer damage, it is caused by accident, and moreover such damage is partly compensated by the fact that they approach the inheritance sooner. - Yet the case is excepted in which one of them had been received into the family of the deceased, and held as a son; for then the deceased at least implicitly promised to have care of him, and obligated himself to this.

569. (b) Nor is the obligation of restoring to creditors of the deceased established, unless the homicide in a particular case foresaw and, according to some, intended the damage of creditors of this kind. Otherwise, damage inflicted upon creditors follows by accident, so that the homicide is not truly the efficacious cause of the same (n. 472); but with foresight, and according to some with intention, added, now nothing is lacking that the homicide should be the efficacious, culpable, and unjust cause of the damage.

To be noted. If one lethally wounded spontaneously and freely before death remits all debts to the homicide, the latter more probably is not bound from strict justice to restitution: for by condonation the debt is extinguished, from what will be said below. - Yet the wounded person, by acting thus, injures charity, if his relatives need support.

2. On Restitution on Account of Duel.

570. (A) He who provokes another to a duel, and by force, fear, or grave threats morally compels him to accept, and at last kills or wounds him, is bound to restitution like a homicide or one who wounds; for he uses unjust means for extorting consent; he who is provoked is truly unwilling, and injury is done to the unwilling.

(B) But if the one provoked spontaneously accepts, and is killed or wounded, or *a fortiori* if the one provoked kills the one provoking, no place is given to restitution by natural law; for each, by freely accepting the duel, freely exposes himself to the danger of incurring damage: but injury is not done to one knowing and willing.

Yet, if the civil judge has enjoined reparation of damage, his sentence obliges in conscience, since it was passed on account of the public good, to keep others away from duel.

3. On Restitution on Account of Seduction or Fornication.

Here the question concerns only temporal damage, which arises especially from the difficulty of marrying a person of the same condition, or from the burden of educating offspring, if any has been conceived; but the loss of virginity is damage in itself irreparable.

571. Obligations toward a seduced or oppressed woman. (A) He who by force or fraud oppressed or seduced an honorable woman is bound to repair all damages which followed from this. For by

using these means, he inflicted damages of this kind unjustly, efficaciously, and culpably.

It is explained: (a) by force or fraud; under which name come not only violent oppression, whether in the state of waking or in the state of sleep or drunkenness, but also threats unjustly impressed, importunate prayers of a superior, lies or false promises - especially a promise of marriage - by which the woman as it were unwittingly or unwillingly is induced to intercourse.

(b) An honorable woman, whether she is a virgin or a widow, provided she is held as chaste according to public estimation.

572. (c) He is bound to repair the damages. And this can be done either by marrying the woman,[1] - or by dowering her, so that more easily she may marry another, although deflowered.

[1] A woman is not bound to accept the seducer who offers marriage, but keeps the freedom of marrying whom she wishes: then the seducer must dower her, according to the common and true opinion.

The former indeed is to be counseled, unless too great a disproportion between the man and the woman, or another grave reason, stands in the way; nor however is it to be imposed under grave sin, unless an explicit promise of marriage had been present; - indeed even in this case this obligation is not to be urged if marriage is morally impossible because of disparity of condition, hatreds going to arise between families, or other unhappy outcomes prudently foreseen, - if the girl from the circumstances could easily have noticed that the promise was feigned, or afterward freely condoned the offense, whether explicitly or implicitly (e.g., by breaking faith).

If the seducer does not marry the girl, he must furnish her a suitable dowry, - or otherwise take care that she can marry according to her condition, - or, if she cannot marry, contribute to her support. - Yet he is excused from this duty if the woman in fact suffered no damage of fortune, because, e.g., she already married according to her state, or entered religion, or died by premature death; likewise, if the woman condoned the injury.

573. (B) He who deflowered a girl freely consenting, or induced her to sin only by prayers, blandishments, or persuasions, strictly is not bound to restitution under this head, unless afterward he manifested the hidden delict to others, or was condemned by the judge to a fine. - The reason for the rule is that injury is not done to one knowing and willing.

But if he manifested the matter to others, by that very fact he becomes an unjust detractor, and under this respect he must repair the damages which followed from it. Moreover, if the judge, on account of the public good, has commanded some reparation, this sentence obliges in conscience.[1]

[1] By French civil law, from art. 1382, a pregnant girl can obtain compensation from the seducer. Cf. Planiol, 4th ed., I, n. 1529 sq.

574. Obligations as regards offspring conceived. (A) If someone has seduced a woman by force, fear, or other unjust means, he is bound, if offspring has been born, to bear all expenses of nourishment and education, because he himself is the unjust, efficacious, and culpable cause of the whole damage. Yet, if the father does not provide for the offspring, the mother is bound, by the law of piety, to educate the infant; but the seducer is bound to compensate all expenses which she underwent.

(B) If the woman freely consented, both parents are held by an equal obligation, in solidum, to educate the offspring until he can provide for himself; for piety, by which parents are held toward children, obliges to this.

(C) It is altogether fitting that the offspring be acknowledged before the Church and the civil forum, and be rendered legitimate, unless a grave inconvenience stands in the way, lest the offspring remain infamous and without inheritance.

4. On Restitution on Account of Adultery.

575. State of the question. Adultery, besides the malice of fornication, carries an injury inflicted upon the other spouse, which must be repaired through satisfaction, when the adultery has become known to the husband; but if it has remained secret, silence must be altogether preserved, lest quarrels be caused. If offspring has not been born from the adultery, no temporal damage is to be repaired; but if offspring certainly has been born from adultery, there is a twofold damage to be repaired: (a) the expenses for nourishing and educating the offspring, which the husband unjustly underwent; (b) the portion of the paternal inheritance by which the legitimate children are unjustly deprived, because the illegitimate child unjustly receives some part of the inheritance. - But more probably damages which come by accident are not to be compensated, e.g., from the fact that blood-relatives give or leave by testament certain things to the adulterine child.

I said: if offspring certainly has been born from adultery; for in doubt, offspring is judged born from the legitimate husband, according to that: the father is he whom the marriage shows.

576. Principles. (A) If a man by deceit or force carnally knew the wife of another, he alone is bound to repair all damages, because he alone is the unjust, efficacious, and culpable cause of the damage.

(B) But if the wife freely consented to adultery, both adulterers are held in solidum to restitution of the damage inflicted upon the husband and legitimate children; for each is the unjust, efficacious, and culpable cause of this damage.

577. Corollaries. (a) Sometimes the adulterous woman alone is bound to repair the damages which happen by reason of inheritance; namely if she could easily have avoided these damages, by nourishing the adulterine offspring outside the family, e.g., in an orphanage, - and the adulterer did whatever he could to obtain this; for by acting thus, he sufficiently retracted the cause of damage posited by him; and the adulterous woman alone, by refusing this means, is the efficacious cause of the damage as regards the division of the inheritance. But this is rarely verified, since in practice it is very difficult to educate offspring outside the family without suspicions arising.

578. (b) If a wife has had carnal commerce with two adulterers, at a time apt for conception, and it is doubted which of the two is the father of the adulterine offspring, it is controverted whether both are bound to restitution: - according to some, neither is bound, because no one is obliged to reparation of damage unless it is morally certain that he is the efficacious cause of the same;

but concerning neither is the matter morally certain. Yet more probably each is bound in solidum or at least according to the proportional part of the doubt; for each posited a cause of itself apt for causing the damage, and if paternity is doubtful, each cooperated in producing this uncertainty; and therefore he cannot be excused from restitution because of this uncertainty.

579. On the mode of restoring. It is very difficult to restore in this case, since from restitution suspicions about the adultery committed can arise, which would disturb the peace of the family. Hence the confessor must be altogether prudent in this matter.

(A) For the most part an adulterous woman is not bound to manifest her crime in order to avoid the damages going to follow from it; such a revelation generally cannot be made without danger of incurring the hatred of the husband, discords, divorce, and grave infamy, not only for herself, but for the whole family; but all these are much graver inconveniences than damages of fortune, and therefore dispense from restitution, if it cannot be done otherwise.

(B) Moreover a son is not bound to believe his own mother when she manifests his adulterine origin, unless from the circumstances as supports this testimony produces certainty, e.g., if it is proved that the father was absent at the time of conception. But if the matter is certainly established, he cannot in conscience retain the paternal inheritance.

(C) If it is possible to educate the adulterine offspring in a foundling hospital, without suspicions arising, this indeed must be furnished, since thus the expenses of education are greatly limited and the division of the inheritance is avoided.

Otherwise, the adulterous woman will strive to restore, by giving more, from her own goods, to the legitimate children than to the illegitimate child, by diminishing expenses, by working more diligently and giving the fruits of labor to the legitimate children. - But the adulterous man can restore by giving something to the legitimate children, whether among the living or by testament, according to the estimation of a prudent man.

II. On Restitution as Regards Goods of the Soul.

Goods of the soul concerning which there can be difficulty are especially reputation and honor.

1. On Restitution of Reputation.

580. Principle: He who unjustly injured another's reputation, whether by calumnies or detractions, is bound from justice to restore it, and at the same time to repair all damages which efficaciously and culpably followed from the defamation.

For whoever knowingly and willingly violates another's strict right is bound to repair it; but by unjust detraction or calumny the strict right to reputation is violated, as was said above (n. 377); besides, often, by injuring reputation, by that very fact the goods of fortune are injured; thus a merchant, physician, advocate, etc., by losing reputation, will by that very fact suffer temporal damages: therefore the unjust defamer is also bound to the reparation of damages of this kind.

The obligation of restoring reputation is personal, and therefore regards only the defamer; but the obligation of repairing temporal damages is real, and therefore passes to the heirs, yet not beyond the forces of the inheritance. - Yet many are ignorant of this, and often are to be left in good faith, lest perhaps they commit formal injustice.

581. Corollaries. (a) He who has sinned gravely by defaming another is bound to repair the reputation even with grave inconvenience to himself; for a grave obligation binds with proportionately grave inconvenience. But if someone injured another's reputation not from grave fault, but from inadvertence or imprudence, he is bound to repair the reputation and damage, but not with great inconvenience.

(b) It can happen that a light injury of reputation induces grave damage in goods of fortune, e.g., if someone loses the office of secretary because he is displayed as talkative: then there is a grave obligation of repairing the grave temporal damage, if it was foreseen.

(c) If the whole fault arises not from the side of the speaker, but from the side of the hearers, who understood his words perversely, the detractor must correct the error not from justice, but only from charity.

582. The mode of repairing reputation. (A) The mode is diverse according as the injury was calumny or simple detraction.

(a) If the question concerns calumny, this must be openly retracted, even with loss of one's own reputation, unless the reputation can efficaciously be repaired otherwise, by saying, e.g., that one erred or was deceived: for the innocent person has a right to reputation rather than the calumniator.

(b) If the question concerns simple detraction, the difficulty certainly increases, since the crime unjustly manifested is true; nevertheless reparation can be made in a twofold way: directly, by saying that one was deceived, that one spoke badly and unjustly; indeed, according to some, the defamer can say that he said what was false, by using a mental restriction; nevertheless Billuart denies this, and deservedly, since such a mode of speaking is a lie; - indirectly, by praising and honorably treating him who was defamed, and by excusing his faults; which often is more efficacious than any mental restriction.

583. (B) If the defamation was public, reparation ought to be public in the same way, insofar as can be done: hence, -

(a) The defamer is bound to restore the injured reputation of the neighbor not only before the immediate hearers, but also before the mediate hearers, when he foresaw that the hearers would spread abroad this defamation; but, since direct reparation is often difficult, then it suffices to exhort the hearers that they retract themselves before those to whom they manifested this.

(b) If the defamation was in writings, generally the reparation also ought to be made in writings.

584. Causes excusing from restitution of reputation. Not rarely causes are given which excuse from restitution of reputation, namely: -

(A) If the defamation was not efficacious, because, e.g., the hearers did not give faith to the detractor, - or another, by correcting the detractor, impeded the evil effect; - or if the infamy has already been removed, e.g., because the falsity of the calumny was publicly acknowledged, or was erased by forgetfulness in the course of time: for then careful provision must be made lest, through an inopportune retraction, the defamation revive.

(B) If reparation is physically or morally impossible; e.g., if the hearers of the detraction are unknown, or cannot be approached; if the delict has already become public by another way; or if another's reputation cannot be repaired without one's own damage much graver.

(C) If the injured person has condoned the injury, whether expressly or tacitly, provided he has the power of condoning, and moreover the public good does not stand in the way; for if the question concerned a magistrate or priest, who needs a good name for exercising his function, condonation cannot be made. - To condonation compensation is added, when namely the defamed person himself injured the reputation of the detractor, and does not wish to repair the injury: for then reparation can be deferred until the other is prepared to repair the reputation.

2. On Restitution of Honor.

585. (A) Principle: He who unjustly injured the honor owed to someone is bound to restore honor to him and the damages efficaciously and culpably following from this. - For we have a strict right to honor as to reputation; and therefore the violation of this right must be repaired.

This is certain when the insult was public in some way, e.g., when someone, before two or three persons, was struck with blows; and it is commonly admitted also when the insult was hidden; for even then the right to honor is violated, from what was said above, n. 398.

586. (B) The mode of repairing honor. That signification of honor is required and suffices which, all circumstances being considered, and the gravity of the injury, and also the customs of places, is suitable, in the judgment of a prudent man, for repairing the damage inflicted. Hence: -

(a) When a superior offends a subject, rarely is he bound to ask pardon from the inferior, but for the most part a friendly greeting, or another sign of benevolence, suffices.

(b) If the offense happens among equals, - either signs of honor greater than usual are to be shown to the injured person, if the injury is not grave; or, if it is graver, pardon is to be sought.

(c) If an inferior directs an insult against a superior, generally a humble petition for pardon is required.

III. On Restitution on Account of the Impeded Attainment of Some Good.

A threefold hypothesis can be distinguished, according as he who is impeded from attaining a good has a strict right to that good, - or only a faculty and legitimate hope, - or is unworthy of a good of this kind.

[1] Lugo, disp. XVIII, n. 90-113; Sporer-Bierb., II, tr. IV, n. 242-260; St. Alphonsus, n. 582-588; Noldin, n. 421.

587. 1. He who in any way impedes another from attaining some good to which he has a strict right, whether in a thing or to a thing, commits true injustice, and is bound to

restitution proportioned to the damage inflicted.

Thus, e.g., if an advocate impedes a creditor from obtaining payment of a debt; if someone by prayers, persuasions, or other means induces a father to deprive a son of the legitimate part of inheritance to which from civil law he has a strict right.

588. 2. If the question concerns goods for the attainment of which there is no strict right, but only a legitimate power and founded hope, a distinction must be made: (a) he who uses unjust means, force, fear, fraud, calumnies, etc., commits injury and is bound to restitution, because each one has a strict right not to be unjustly impeded from attaining a good which he can legitimately acquire.

Thus, e.g., he who by fraud impedes an uncle from making a testament in favor of a nephew; - he who by calumnies prevents a rich man from bestowing alms upon such a poor man; - he who, by defaming a servant, keeps him away from the service which he deservedly hoped for; - a merchant who, in order to sell his own goods, lowers the goods of others by lies, or, by intercepting their letters, supplies the goods which were being sought from them, etc.

(b) But he who uses means in no way unjust, but only prayers, services, persuasions, etc., does not sin against justice, nor is he bound to restitution; for by doing this, he uses his own right.

Thus, e.g., he who by prayers induces a testator not to leave an inheritance to such a non-necessary heir, but rather to another more beloved to himself; he who by persuasions moves a bishop not to confer a benefice or ecclesiastical office upon such a priest, - indeed the more worthy, but by no means having a right to it, - but rather upon another less worthy.

589. 3. If someone impedes another from attaining a good of which this latter is unworthy, he does not do injustice, nor is he bound to restitution, because the unworthy person has no right to that good, but on the contrary ought to be kept away from it, on account of the public good.

Thus those who reveal to superiors the hidden delicts of someone, lest an office be conferred upon him for which he is unfit; - a woman who turns a prodigal husband away from making a donation to someone who pretends that he himself is poor.

590. Corollaries. 1. Those who pretend to be poor, while in fact they are not, and thus obtain abundant alms, unjustly extort money from donors, and must restore to the donors themselves who were deceived, if this can conveniently be done, or to other poor persons or pious works, according to the presumed intention of the donors. -

But if they are poor, and merely pretended to be a little poorer than they in fact are, they are not bound to restitution, since this mode of acting is for the most part understood by the rich, and does not induce a substantial error.

What has been said of the poor can be applied to all those who, under a feigned title, extort gifts, money, or legacies.

2. If the damage regards a right to a thing or a legitimate hope, restitution must be made according to the estimation of prudent men.

IV. On Restitution on Account of Defrauded Taxes.

In order that the matter may be better understood, a few things concerning the notion and obligation of taxes must be noted beforehand.

[1] Concerning taxes, besides the theologians, see economists, e.g., P. Leroy-Beaulieu, *Traite d'Economie Politique*, Paris, 1896, t. IV, p. 736-799; P. Cauwes, *Cours d'Econ. Politique*, Paris, 1893, t. IV, n. 1216-1290; C. Gide, *Principes d'Econ. Polit.*, Paris, 1903, p. 611-634; R. Ely, *Taxation in American States and Cities*, New York, 1818; Seligman, *Essays on Taxation*, New York, 1895; id., *Progressive Taxation*.

1. Notion of Taxes and Conditions that These Be Just.

591. (A) Taxes, or duties, are whatever citizens are bound to pay for relieving the common burdens of the commonwealth. - They are various, but more commonly they are distinguished into direct and indirect: the former are those which immediately and primarily affect persons because of the goods which they possess, immovable or movable, or the arts or businesses which they exercise. But indirect taxes are judged to be those which immediately and primarily affect the things themselves, and only mediately persons, such as those which are collected on the occasion of succession, transportation, manufacture, etc. This is the common distinction; yet sometimes civil laws, in various regions, do not understand this division of taxes in the same way.

(B) Now, in order that taxes be just, especially a threefold condition is required: (a) that they be imposed by legitimate and competent authority, national, provincial, or municipal; (b) for a just cause, namely the utility or necessity of the commonwealth; and therefore under this head taxes imposed for useless or, a fortiori, harmful expenses are excluded;[1] (c) with due proportion preserved to the faculties of each one, so that those who are richer and receive more of the benefits of civil administration likewise bear greater burdens.

[1] Wise economists admit that in modern societies there are certain taxes of this kind.

2. The Obligation of Paying Taxes in Conscience.

592. A twofold opinion is given concerning this matter: for some say that tax laws are merely penal, and oblige only to paying either the tax or the fine which is imposed upon those defrauding: for today civil legislators, at least implicitly, declare that they do not wish to impose this obligation in conscience; moreover laws are so understood by most citizens, who in fact are conscious of no sin when they evade taxes.[2] Yet the more probable opinion, to which we adhere, holds that laws of this kind, when otherwise just, truly oblige in conscience.

[2] Thus, e.g., Ball. P., n. 327; Crolly, III, n. 1010-1023; Berardi, III, n. 413; Genicot, n. 574; Noldin, n. 466.

593. Principle: Tax laws, when they are just, of themselves oblige in conscience, directly indeed from social justice, but indirectly from commutative justice, after the quota part has been legitimately determined. Thus more probably.[3]

[3] Bouquillon, *Theol. Moralis fundamentalis*, Paris, 1903, n. 227-229; Marres, *De justitia*, I, 196-197, 199-209; Waffelaert, II, 421.

It is proved. (A) In the Gospels, the matter indeed is not explicitly declared, but is shown as consonant with the doctrine of Christ and His manner of acting. For when the Pharisees and Herodians asked Him whether it was licit to give tribute to Caesar, He answered:[1] "Render therefore to Caesar the things that are Caesar's, and to God the things that are God's." What He was teaching, He had already confirmed by example; for a little earlier, He had ordered Peter to pay the tribute.[2] - St. Paul clearly inculcates the same doctrine:[3] "For because of this you also pay tributes; for they are the ministers of God, serving unto this very thing. Render therefore to all their dues: to whom tribute, tribute; to whom custom, custom."

[1] Matt., XXII, 21.

[2] Matt., XVII, 23-26.

[3] Rom., XIII, 6-7.

594. (B) It is proved by reason. For citizens are bound in conscience to furnish those things which are necessary for protecting and preserving society, since men are born to live in society; but society generally cannot be preserved unless the expenses necessary for preserving good order and defending the fatherland against enemies are paid; - moreover, unless citizens are held in conscience to pay these expenses, the intended end will not easily be obtained; for a way will be opened to innumerable frauds and deceits, with the greatest detriment of the treasury and of morals; the honorable and simple will pay more than is fair, while the dishonest and deceitful will pay less; the richer will pay taxes not according to their resources and faculties, but according to their own judgment, since they can hide the greatest part of their goods; and thus inequality and injustice will prevail, with the greatest detriment of the whole of society.

Therefore this obligation arises from justice not only legal, but also commutative; for, when the State has determined the sum of money which is necessary for common expenses, if certain citizens fraudulently do not satisfy their obligation, by that very fact heavier burdens are imposed upon others, and therefore these must pay not only the part of taxes which is proportioned to their own fortune, but also the part which is not paid by those defrauding.

595. It is explained. (a) It was said of themselves, insofar as, namely, the legislator has the power of obliging subjects in conscience, and in fact generally intends to oblige them thus; hence, if from the circumstances it is clear that such was not the mind of the legislator, and that the law is understood by the greatest part of the people as merely penal, so that even the God-fearing use frauds as often as they can avoid the fine, accidentally the law does not bind in conscience. Likewise custom can bring it about that a law which before had obligatory force from the very intention of the superior afterward becomes merely penal. - This indeed is to be regretted, because, while the upright pay taxes in full, the less honorable only partially satisfy their debts, and little by little injustice prevails; whence it also happens that the God-fearing labor under anxieties.

(b) After the quota part has been legitimately determined; for today a tax law does not oblige subjects unless the quota to be paid has been determined by legitimate authority: for then only,

according to the laws, does the general duty of paying taxes pass into a strict obligation, which can be sought by civil action. But concerning the various modes by which that determination is legally made, see the laws of various nations. So that the quota part to be paid may more easily be determined, the laws command that either citizens themselves declare the value of their things, or fiscal officials (*repartiteurs*) or magistrates investigate the matter. Now citizens from legal obedience are bound to declare things subject to tax, insofar as legitimate custom interprets these laws; hence, if a milder interpretation of the laws is in use by common custom, with the legislators knowing and remaining silent, this indeed can be admitted in conscience. I said from obedience, not from justice; yet, if someone has violated the law in this matter by lies or frauds, indirectly he can be bound to restitution, insofar as he was the cause why the treasury could not receive the tax established by law.

3. Practical Conclusions as Regards Restitution of Taxes.

596. (A) According to all, tax-collectors are bound to restitution when they knowingly and willingly favor those defrauding, since from office they must prohibit this. - Likewise those who corrupt collectors, lest they exact taxes which are truly owed, or by force or fear impede them from inquiring about things liable to tax: for then they become cooperators of the collectors in an unjust matter. This is clear from what was said above, nn. 494, 512.

(B) Those who from habit, and as if from art, devote effort to defrauding duties, sin gravely, both because they expose themselves to grave danger, and because they prepare themselves in mind even for bloody defense against the guards of duties. - Moreover, according to the opinion which we have explained, they are guilty of injustice, and are bound to restore, especially if they have become richer from this.

597. (C) In regions in which the tax law is held as obliging in conscience, and upright citizens are accustomed faithfully to pay taxes, according to the opinion explained above those who use frauds so as not to pay them are bound to restitution: for injury is done either to the State or Municipality, or to the other citizens who under this head must bear greater burdens. - But where a custom has prevailed of declaring goods, whether movable or immovable, much below the value of the things, and therefore of paying lesser taxes, the upright cannot be compelled, under the burden of restitution, to declare the full value: otherwise, they would pay more than is fair. This especially holds where taxes are imposed that are too burdensome, and many useless expenses are made.

598. (D) As regards military law, these things seem to be established: (a) Those who corrupt physicians by gifts, so that by them they may be declared unfit for military service while in fact they are fit, are bound to restitution toward those who, in their place, were called to military service, namely where a determinate number is taken; for thus they cooperate in the unjust action of the physicians, who from office must declare as fit those who truly are such. - But otherwise, if they only strive to capture their benevolence, so that in doubt about their fitness they may favor them.

(b) When those called to military service withdraw themselves from military service by mutilation, feigned illnesses, or lies, they indeed sin against the obedience owed to legitimate authority; but the

question is whether they are bound to restitution. Now, where all are called to military service, they violate the rights of no citizen, and therefore cannot be compelled to restitution; but where a determinate number is taken, we think, according to the principles explained above, that they are bound to restitution toward those who, in their place, were enrolled in military service, because they truly are the efficacious cause of this damage. Nevertheless some probably teach that they are bound to nothing, because they are indeed the occasion why others are taken, but not the cause: the truly efficacious cause is the law of conscription itself. This argument seems weak to us; for those who withdraw themselves from military service in this way are the efficacious cause why the law is applied to others, who otherwise would have been exempt from military service.

(c) Whatever may be the case, those who by natural law (e.g., because of illness), or by ecclesiastical law, are immune from military service, do not sin while they use licit means to evade the law, nor are they bound to restitution toward those who, in their place, are enrolled in military service; for by acting thus, they use their own right. - Moreover, good faith often excuses.

Art. III. On Causes Excusing from Restitution.

599. After what has been said concerning the obligation, roots, and circumstances of restitution, it remains to inquire whether and what causes excuse from restitution. But some excuse for a time, others forever: concerning these we must speak separately.

[1] Lessius, lib. II, cap. 16; Sayrus, lib. X, tr. V, cap. 6; Lugo, disp. XXI; Billuart, diss. VIII, art. XX; Sporer-Bierb., t. II, tr. IV, n. 511-568; St. Alphonsus, n. 696-706; Carriere, n. 1267-1300; Ball. P., n. 527-550; Lehmk., n. 1038-1044; Genicot, n. 557-559; Noldin, n. 504-512.

§ I. On Causes Excusing for a Time.

The causes which excuse from restitution for a time are referred to two heads: inability and damage going to follow from restitution to the creditor or to a third person.

I. On Inability, Insofar as It Excuses from Restitution.

Inability is twofold: physical or absolute, and moral.

600. 1. Principles. (A) Physical or absolute impossibility, - which consists in this, that the debtor has nothing from which he may restore without reducing himself to extreme necessity, - certainly excuses from restitution as long as it lasts; for no one is held to the impossible, and in a case of extreme necessity, each one can secretly take, and *a fortiori* keep, those things which are necessary for relieving this necessity; the owner, in this case, would not reasonably oppose the delay of restitution.

(B) Moral impossibility, - namely when someone cannot restore without grave damage either to himself or to his family, - excuses from restitution as long as it lasts, unless from the delay the owner suffers similar necessity. - For the law does not oblige with so great an inconvenience; moreover the owner is not reasonably unwilling when he wishes restitution to be made immediately which would bring so great a damage to the neighbor. - Yet, if both the owner and debtor are situated in the same grave necessity, the condition of the owner ought to be better, since he has a right to the use of the thing, while the debtor does not have such a right. - But if the debtor, by restoring, would fall into

extreme or quasi-extreme necessity, while the creditor is only in grave necessity, restitution can be deferred.

601. 2. Corollaries. (A) If the debtor cannot restore without falling from his own state justly acquired, he can defer restitution; thus merchants, magistrates, etc., who, by immediately paying debts, would lose their business or office. This probably is extended to those who by their own fault, by gambling, drunkenness, have incurred this necessity. Yet upon all these the obligation is incumbent of diminishing their expenses and diligently working, so that they may be able to restore as soon as possible.

This privilege is not extended to those who, according to public estimation, have acquired their state unjustly, e.g., by robbery or a supposed testament: for these, by immediately restoring, do not fall from their state, but rather return to their former state.

602. (B) If the debtor cannot immediately restore without suffering great damage in goods justly acquired, e.g., without selling his possessions for a much lesser price than they are worth, - or without depriving himself of an instrument necessary for working, etc., he can defer restitution.[1]

[1] Hence in most regions workers cannot be compelled to sell instruments necessary to their art; and in some, the paternal house cannot be alienated for paying debts, except under altogether special conditions. Thus, on July 12, 1909, in France, a law was promulgated "on the constitution of an unseizable family good," whose text you will find p. 224*.

(C) The same must be said if the debtor cannot immediately restore without grave damage in goods of a higher order, whether of body or of soul; because, namely, he would deprive himself of money necessary for recovering health, or would expose himself or certain members of the family to danger of sinning.

603. (D) On this occasion it is asked whether one burdened with debt can enter religion before he has restored? - According to the principles explained above, he can indeed enter religion if otherwise he is situated in grave danger of losing his soul; but, even after entrance into religion, he must do all things suitable to his state, so that he may earn what is necessary for paying debts. But since, in our days, there are many inconveniences in accepting debtors of this kind, Prelates ought not to admit them: for it is better that these, by working strenuously, first pay debts; and afterward enter religion without disgrace.

Besides, Sixtus V prohibited those who by their own fault had contracted debts from entering religion, and decreed their profession invalid; Clement VIII abrogated this constitution as regards the nullity of profession, but not as regards the prohibition itself; from the Code, those burdened with debt, who are not able to pay, are illicitly but validly admitted to the novitiate.[2]

[2] Sixtus V, Constit. *Cum de omnibus*, November 26, 1587, *Bullar. Roman.*, t. IV, part IV, p. 371-372; Clement VIII, Constit. *In suprema*, April 2, 1602, ibid., t. V, part II, p. 410; Code, c. 542, 2°.

604. (E) When the debtor, in these various cases, has deferred restitution, is he bound to compensate ceasing profit or arising damage which the creditor has suffered from this? It is controverted among theologians; for the matter to be solved fairly, a distinction must be made:

(a) A debtor from delict, that is, a possessor in bad faith, or an unjust damager, must compensate all these things, because he is held concerning damage unjustly inflicted; but even if from a just reason he has deferred restitution, he was culpable in the cause, since already previously he ought to have restored.

(b) But a debtor in good faith is not bound to compensation according to many, provided he is not in culpable delay: for he is not the unjust and culpable cause of this damage. Yet today this cannot be accepted without restrictions. For, as soon as he knows that the thing is not his own, he could not legitimately receive the natural fruits except on that condition, that he render them to the owner, and therefore he must pay legal increase. Besides, if he foresaw that the owner would suffer certain damages from the delay, it seems to us that he could not keep the thing except on that condition, that he repair these damages as soon as he could furnish this without grave inconvenience; - but if he foresaw nothing, under this head he is not bound to restitution.

II. On Damage of the Creditor or of Another Person, Insofar as It Excuses from Restitution.

605. If from immediate restitution grave damage, spiritual or temporal, threatens the creditor himself or another person, the debtor can, and sometimes from charity must, defer restitution. For then the creditor is not judged reasonably unwilling, and moreover generally from charity we are bound to impede the damage of the neighbor, when this can conveniently be done.[1]

[1] Hence, if delay inflicts grave damage upon the debtor, because, e.g., the creditor is going to prosecute the debtor before judges as guilty of injustice, he can, without injuring charity, restore immediately.

Thus restitution can be deferred if it is foreseen that the owner is going to abuse his thing for indulging drunkenness or lust, or for wounding or killing some innocent person. But for this it is required that the delay be foreseen as efficacious: for if in no way it can impede the evil effect, e.g., because the creditor will use other means for sinning or harming others, there is now no reason for deferring restitution.

§ II. On Causes Excusing from Restitution Forever.

The principal causes which extinguish the obligation of restoring are: condonation, compensation, donation, sentence of the judge, and composition granted by the Holy See.

606. 1. Condonation, whether express or tacit, that is, remission of the debt made by the creditor, provided however it be clothed with certain conditions, namely: (a) altogether free, that is, immune from every error, fraud, fear, or force; hence condonation does not have force if the creditor errs or is deceived about the quantity of the debt, thinking it to be much less than it truly is, - if the debtor uses threat or pretends that he is much poorer than he in fact is; (b) that it be made by him who has the power of condoning, that is, who can donate his goods, according to those things which we shall hand down where the capacity of donating is treated.

By natural law, condonation can be express or implicit, or tacit, e.g., by deleting the note of debt; but it cannot easily be presumed. Yet in certain cases, it is deservedly presumed when a positive and solid foundation is present; thus children of the family generally can presume the condonation of parents

when the question concerns a sum of money which is not very great and has already been spent; the same holds for wives.

By French law, condonation is presumed when the creditor sends back to the debtor the note by which the debt is proved. Of itself no special form is required for condonation; but for gratuitous condonation the conditions necessary for donation itself are desired; if it is made by testament, the essential forms of testament must be observed.

607. 2. Compensation, by which an equal debt on both sides is extinguished, provided both are certain and from strict justice.

Often civil law also requires that it be made in the same genus of goods. - To this is added payment made to the creditor of the creditor, which is legitimate when it is made from a reasonable cause; namely if the creditor cannot obtain payment of the debt, he can ask from the creditor of his debtor that he himself be willing to pay the debt; thus Paul owes one hundred coins to Peter, while John owes one hundred and fifty to Paul; Peter can ask from John the payment of one hundred coins, and thus John will owe only fifty to Paul. - Yet this faculty in various regions is restricted by law.[1]

[1] As regards France, cf. C. civ., n. 1292, 1293; C. proced. civ., a. 557, 580, 581; Planiol, II, n. 567 sq.; 456 sq.

608. 3. Donation of an equivalent thing made to the creditor; namely when Caius, who owes fifty coins to Titius, gives him a thing of the same price, which Titius accepts, provided however he has at least the implicit intention of paying the debt, and not of making a donation, as was already noted above (n. 562).

609. 4. Declaratory sentence of the judge in doubtful matter; namely when it is doubted whether some thing is owed to someone, the civil judge can solve the doubt, and the public good demands that the parties adhere to this sentence in conscience. - Yet if afterward it is discovered that the sentence was objectively unjust, - because, e.g., a new title hitherto unknown is discovered, - it will certainly be licit for the injured party to seek back those things which had already been paid, whether judicially or by another legitimate mode.

610. 5. Composition, or remission of debt granted by the Supreme Pontiff, whether directly or through Sacred Congregations. This indeed can be made for uncertain temporal debts, and for ecclesiastical goods.

(A) When the owner to whom restitution must be made remains altogether unknown, even after diligent inquiry, regularly the possessor in bad faith would have to give the thing owed to pious causes. But sometimes it happens that the debtor cannot restore the whole without great inconvenience; then recourse can be made to the Supreme Pontiff, through the Sacred Penitentiary or Dataria. Now the Supreme Pontiff is accustomed to make condonation in such a way that he decrees that some part of the debt is to be applied to pious causes, and grants another part to the debtor. This indeed is consonant with reason: for by force of the supreme power with which he is endowed, he can do everything that is truly useful for the salvation of souls; but when the question concerns uncertain goods, it is often expedient for tranquility of conscience that some composition be made: for this benefits the debtor, who, if restitution were omitted, would be situated in bad faith, - and

also pious causes, which receive part of the debt, while otherwise perhaps they would have received nothing.

But what if afterward the true owner appears? There is no difficulty if the time for prescription has already elapsed, as will generally happen concerning movable things. But if the time has not elapsed, the debtor in conscience is not bound to restore that which in good faith he gave to the poor, except after the sentence of the civil judge; indeed, according to many, he is not bound, before the sentence of the judge, to render that which the Supreme Pontiff from a just cause had condoned; for the latter, in a case of doubt, has the right of transferring dominion from one to another, just as the civil power itself; nevertheless it is better to return this part to the owner, even before the sentence of the judge, if this can be done without grave inconvenience.

(b) As regards ecclesiastical goods usurped or illegitimately detained, the Supreme Pontiff, by force of high dominion, from a just cause has in fact condoned them several times, especially to Governments. From the Indult of September 21, 1907, the Ordinaries of France can admit to an equitable composition the buyers of ecclesiastical goods or other illegitimate holders, with the consent of those who canonically represent pious causes and of others having interest.

Part II — Chapter I: On Contracts in General

Second Part. On Contracts.

611. A contract is nothing other than one of the modes of acquiring various rights: first indeed man occupies things of no one; afterward by labor he produces new things which he legitimately makes his own; but since he cannot by his own art make all things which are necessary or useful to him, he strives to procure the same from others, namely by exchange, sale, lease, in one word, by pacts or contracts.

The origin of contracts, therefore, must be sought from the very social nature of man; for since man was born for society, by that very fact he tends not only to living, but also to making pacts with other mortals: namely, his powers are very limited and he soon understands that he cannot at the same time devote labor to agriculture, pastoral life, and various mechanical arts; indeed, even if he could, this would not be expedient; for by devoting himself to one art only, he becomes more skilled in the same, and produces far more things and more perfect things: by division of labor, as they say, manufactured things increase immensely. But if a thing of one and the same genus only is made, he will have more than are necessary to him; moreover he needs many things which by his own labor he cannot acquire for himself; therefore it is necessary that by making pacts with others he obtain them.[1]

[1] F. Bastiat lucidly explained this origin of contracts and social utility, *Harmonies Economiques*, Paris, 1851, p. 74-113; cf. Ahrens, *Cours de Droit naturel*, Leipzig, 1875, t. II, § 81-82.

612. For completing this matter, first indeed we shall discuss contracts in general, namely by setting forth those things which are common to all; afterward the principal contracts in particular, but not individual ones; for when the moral principles concerning the principal pacts have been elucidated, it is not necessary to go through individual cases minutely; but it suffices that, when the occasion is given, when a difficulty occurs, recourse be made to the civil Codes of various Nations, which for the most part solve the matter according to the norms of equity, and also to jurists, to whom it is known how laws of this kind are authentically explained by magistrates.

Preliminary notes:

- On the general concept of contracts.
- On the force of legal nullities in conscience.

Chapter I. On Contracts in General:

- On consent:
    - on its qualities;
    - on defects harmful to consent.
- On the matter of a contract.
- On the subject of a contract, or on those contracting.

- On the effects of contracts.

Chapter II. On Contracts in Particular:

- On gratuitous contracts:
  - on promise;
  - on donation;
  - on testaments;
  - on successions.
- On onerous contracts of certain event:
  - on buying and selling;
  - on lease;
  - on the hiring of services, or on the contract of labor;
  - on loan;
  - on the contract of partnership.
- On onerous aleatory contracts:
  - on insurance;
  - on gambling;
  - on stock-exchange speculations.

Art. I. Preliminary Notes.

We shall speak: 1. of the general concept of contracts; 2. of the force of legal nullities in conscience.

[1] Lugo, disp. XXII, n. 1-35; Salmanticenses, Tr. XIV, *de Contractibus*, cap. 1, n. 1-7; Haunoldus, *de Justitia et Jure privatorum*, Ingolstadt, 1672, Tr. VIII, cap. 1; Beusch, *de Pactis et Contractibus*, in Migne, *Curs. Theol.*, XVI, cap. I, n. 1-7; cap. II; Carriere, *De Contractibus*, n. 2-16; 86-172; Marres, lib. III, n. 1-6.

I. On the General Concept of Contract.

613. 1. Definition. A contract can be defined as an agreement between two or more persons, by which some right is transferred and a certain obligation is produced.

It is said (a) an agreement, that is, the consent of several persons in one and the same agreed thing: for at least two persons are required, so that a right may be transferred from one to another; moreover, unless the contracting parties consent to one and the same thing, the essential condition for the moral transfer of right will be lacking, namely handing over made by one and accepted by the other.

(b) By which a right is transferred and an obligation is produced; that right can be in a thing or to a thing; for each can be transferred; - but a right cannot be transferred unless by that very fact some obligation is undertaken, or bond of right by which someone is bound toward another to giving, doing, or omitting something.

Hence in a contract three essentials can be distinguished: - (a) consent of the parties concerning some right to be transferred; (b) the object about which consent can be concerned; (c) persons capable of contracting.

Besides, in a contract certain things are said to pertain to its nature, namely those which by law or custom are included in it, unless they are excluded by explicit agreement, e.g., insurance against eviction to be furnished by the seller to the buyer. But accidental things are said to be those which can be added to the contract, but are not judged added unless by a special pact, e.g., delay of payment beyond the time established by law or custom.

614. 2. Various species of contracts.[1] (A) By reason of effect, contracts are: (a) bilateral, or synallagmatic, when they beget an obligation in each contracting party, as are buying-selling, lease; (b) unilateral, which beget an obligation in only one of the contracting parties, such as promise, donation.

[1] Divisions of this kind are found in most civil Codes, but the formalities for a solemn contract are various among various Nations. - For France, cf. *Cod. civ.*, a. 1102-1106; Planiol, II, n. 947-996, *Supplement.*, p. 76*.

(B) By reason of cause, or motive: (a) some are gratuitous, when someone transfers a right to another gratis, that is, without his own emolument, as happens in donation; (b) but others are onerous, when each of the contracting parties receives something of advantage and something of burden, as in sale and lease; (c) finally others are called mixed, when they are partly gratuitous and partly onerous; e.g., if in a sale it is stipulated that only half of the price must be paid by the buyer, - or if a donation is made under an onerous condition, although light. - But, as is clear from the notion itself, mixed contracts are referred to onerous ones.

Every bilateral contract by that very fact is onerous, since it begets an obligation, and therefore a burden, in each contracting party; but there are given onerous contracts which are not perfectly bilateral: thus a loan in which an increase is stipulated is indeed onerous, because each contracting party feels a burden, the lender by alienating money for a time, and the borrower by obligating himself to return the thing with an increase; but it is not properly bilateral, because only the borrower undertakes an obligation.

615. (C) By reason of the thing to be furnished, onerous contracts are: (a) of certain event, or commutative, when the thing to be furnished is certain and at the same time determinate, e.g., if such a thing is sold here and now for such a price; (b) aleatory, or of uncertain event, when the thing to be furnished, or at least the quantity of the thing, depends upon a fortuitous event, as in gambling, insurance, speculations.

(D) By reason of the mode by which they are perfected, contracts are: (a) consensual, if they are perfected by consent alone; and these indeed are called simple, if they are contracted without a special formality; but solemn, if they cannot be contracted validly without certain formalities; (b) or real, which are perfected not by consent alone, but by handing over the thing, such as loan, pledge, deposit.

Likewise by reason of mode, contracts can be entered explicitly, by words, writings, or other signs expressly showing consent; or implicitly, or by tacit consent, or quasi-contract; when, e.g., the office of judge, pastor, is undertaken, by that very fact implicitly, and by force of quasi-contract, the obligation is undertaken of rightly fulfilling all offices attached to the same.

616. (E) Finally, besides named contracts, namely those which have their own name in law, - there are unnamed contracts which lack their own name, and are reduced to four species: (a) I give that you may give; (b) I give that you may do, or omit doing; (c) I do that you may do, or not do; (d) I do that you may give.

II. On the Force of Legal Nullities in Conscience.

617. We presuppose, from the Treatise on Laws, that there is present in the civil power the faculty of making laws concerning merely civil contracts, and also of defining conditions for their validity. Now human law can touch contracts in seven ways:

[1] Laymann, lib. I, c. 16; Carriere, n. 88-172; Bouquillon, *Theol. Fundament.*, n. 237-240; Van Gestel, *De Justitia et Lege civili*, Groningen, 1896, n. 63-87; Noldin, n. 346-347.

1. Sometimes it neither prohibits nor approves them, but only attributes no force to them in the external forum; thus, in many regions, contracts from gambling are not acknowledged by law, insofar as rights arising from them cannot be vindicated before judges; then there is no difficulty: the value of the act must be defined from natural law.

2. At other times, it prohibits certain acts, but acknowledges their validity if they in fact are done; thus often brokers (*courtiers*) are forbidden to conduct business for themselves in those things in which they exercise their function; then likewise there is no difficulty, since the act, although illicit, is held as valid by law.

618. 3. Sometimes it is decreed that contracts are not null of themselves, but only rescindable; thus, e.g., as regards many acts of minors; then contracts are to be held as valid as long as they have not been invalidated by a judge.

4. But sometimes contracts are declared null by the law itself, yet in such a way that from the context or purpose of the law it can be understood that the act is indeed invalid in the external forum, but remains naturally valid or valid in the forum of conscience; in which case, before the sentence of the judge, he whom the contract favors can hold it as valid and use it, since it retains its force in the forum of conscience; moreover those whose interest is concerned can, with a safe conscience, use their own right and demand the nullity of the contract; and after the sentence of the judge, each party must acquiesce in this: for the public good demands that legitimate sentences of tribunals have force in conscience. - Indeed, even before the intervention of the judge, if the contract is evidently null from civil law, and one party seeks the rescission of the contract, charity demands that the other party not stand in the way of this rescission, lest useless expenses of litigation be incurred.

619. 5. Finally, law can invalidate a contract not only civilly, but also naturally, or in the forum of conscience, even before the declaratory sentence of the judge, as often as the public good demands this. - Thus commonly.

Most admit that the civil power can make such laws: for just as the Church, in religious matters, can invalidate certain contracts even before the sentence of the judge, so likewise political power, in

temporal matters, can invalidate contracts in the same way, even in the forum of conscience, as often as the public good demands this: for each power proceeds from God, and is supreme in its own genus, so that it can make laws which, before the sentence of the judge, oblige in conscience.[1]

[1] This can be confirmed by a recent example; the Italian law of May 1, 1866 had established that creditors were bound to accept paper money (*monnaie en papier*) in payment, notwithstanding any contrary pact; now the Sacred Penitentiary, having been asked whether a law of this kind had force in the forum of conscience, on January 21, 1873, responded: "regularly in the affirmative, unless particular circumstances stand in the way." (*Acta S. Sedis*, t. VII, p. 211.)

But the whole difficulty is in defining which civil laws oblige thus. When the legislator has clearly declared this, there is no difficulty; but today legislators do not explicitly speak of the moral obligation of laws; hence the question must be solved from the purpose of the law, common interpretation, or custom; namely, if the public good demands that the law be held as invalidating even before the intervention of the judge, immediately it must be held as invalid in conscience; such would be, e.g., an agreement by which children would make a pact with parents about not giving support, or a contract concerning the furnishing of an illicit thing. - Otherwise, a contract can be held as naturally valid before the sentence of the judge; for an act valid by natural law ought not to be held as null, unless it is morally certain concerning its nullity.

6. Today by some jurists not only null and rescindable contracts are acknowledged, but also non-existent ones,[1] namely those which lack one of the elements absolutely necessary for validity, e.g., free consent; these are null, even in the forum of conscience, before the sentence of the judge. - Yet if the matter is doubtful, the declaratory sentence of the judge can be awaited.

[1] Planiol, I, n. 345.

7. Contracts entered into in fraud of the law are affected by that nullity which the violated law decrees, by reason of the public good.

Art. II. On the Consent Required for a Contract.

Theologians and jurists teach with unanimous voice that consent is required for the essence of a contract; therefore we shall speak: 1. of the qualities with which it must be clothed; 2. of the defects which can harm it.

[2] Lugo, disp. XXII, n. 35-186; Salmant., cap. I, n. 8-22; Haunoldus, Tr. VIII, cap. 2; Billuart, diss. I, art. 2-4; St. Alphonsus, n. 709-710; 714-719; Beusch, cap. I, n. 18-92; Carriere, n. 19-80; Marres, l. III, n. 38-103; Noldin, n. 521-528; cf. *Supplem.* for France, p. 77*; Planiol, II, n. 1047-1076.

I. On the Qualities Required for Consent.

620. Principle. For the validity of a contract, consent by natural law must be: 1. internal and free; 2. external, or manifested by external signs; 3. mutual.

1. Internal and free, that is, not feigned, nor indeliberate or coerced, but furnished from the soul, with that advertence and liberty which are required for a truly human act, and with the intention of obligating oneself. For by a contract a right is transferred and a moral obligation is undertaken; but a right, since it is a moral power, cannot be transferred without a moral and

free act; likewise a moral obligation cannot be undertaken without a truly human act, and therefore one internal and free.

Therefore consent uttered in jest, or merely presumed, or given on the condition that it can be withdrawn at pleasure, does not suffice for a contract; nor consent furnished by him who is actually drunk, hypnotized, or insane.

621. Corollaries. (A) He who consents fictitiously, although externally he seems seriously to utter words, in fact does not perfect a contract. But in the external forum, both civil and ecclesiastical, consent seriously given is deservedly presumed to be internal, until the contrary is morally certain.

(B) He who, coerced by no force, consented fictitiously, has unjustly inflicted damage upon another, and from justice is bound to repair it; but often the damage cannot be repaired except by furnishing true consent, and therefore by perfecting the contract.

(C) He who enters a pact with the intention of obligating himself, but with the mind of not fulfilling the obligation undertaken, validly contracts, undertakes a true obligation, and is bound to fulfill it; for for the essence of a contract the intention of undertaking an obligation suffices, which is included in the will of contracting. - Yet, if someone were to manifest the intention of not fulfilling the obligation, saying, e.g.: I promise you one hundred coins, which nevertheless I shall never give, such a mode of speaking could be held as a jest.

622. 2. External, that is, manifested by sensible signs; for since contracts are entered among men, who cannot understand the intimacies of the heart unless they are externally manifested, merely internal consent by no means suffices for the validity of a pact.

By natural law it is not required that consent be expressed by words, but any external sign suffices by which the mind of those making the pact is clearly understood. But often by civil law it is commanded that consent be manifested by words or writings, so that lawsuits may more easily be guarded against.

But silence, or taciturnity, generally is not held for consent unless from the circumstances it signifies assent. Now in gratuitous contracts, as in donation, silence can for the most part be held as acceptance; yet not so in French law (below, n. 681); for in favorable things, he who is silent seems to consent; but otherwise in onerous contracts, since no one is judged to undertake an obligation unless he manifests consent by some sign.

Hence, if publishers of newspapers, by sending papers to various persons, declare that the price of subscription is owed by those who do not send the newspapers back, silence cannot be held as consent, at least where civil law decrees nothing concerning this matter.

623. 3. Mutual, or furnished by each contracting party concerning the same object after the notification of at least one to the other. For there are at least two contracting parties, namely one who proposes, or offers, something, and the other who accepts; and therefore, if the consent of either party concerning one and the same thing is lacking, there will no longer be a contract. This indeed is clear where the question concerns a

bilateral contract, since no one can obligate himself without some consent; and it holds also for a unilateral contract, because no one acquires a right unless he accepts the thing offered.

It is not required that each contracting party elicit or signify consent at the same time, but it suffices that the consent of one morally persevere when the other expresses his consent or at least manifests it to the other: for then both truly consent to the same agreed thing. Hence a contract between absent persons can be perfected through a procurator, letters, or by the help of telegraph or telephone.

624. Corollaries. (A) He who has offered some thing to another can by natural law recede from his promise as long as it has not been accepted by the other; for a mere offer does not bind unless after it has been accepted. - He can moreover determine the time within which the other must consent, saying, e.g., I offer you this horse for one thousand coins, if you consent within three days; then, if the other consents within this time, the contract has force; but if after the elapsed time, it does not have force, because the prior consent no longer virtually perseveres. - If no time has been fixed beforehand, the consent of the offerer given absolutely is judged to continue until it is revoked; but sometimes civil laws define something concerning this matter, which, as determinative of right, obliges in conscience.

(B) When a contract between absent persons is perfected, it is doubted whether it is entered at the time at which the accepting party expresses his consent, or only at that time at which this acceptance becomes known to the offerer.

(a) In gratuitous contracts, by natural law the contract is perfected as soon as acceptance is manifested by an external sign, even if it is not yet known to the offerer; for, in a favorable thing, silence itself is held as consent, and a fortiori positive acceptance, even if not yet notified. - Yet sometimes, by civil law, acceptance notified to the donor is required, as happens in France for solemn donation.

(b) In onerous contracts, the matter is controverted; some affirm that acceptance suffices, without its being notified to the other; for since the consent of the offerer perseveres, now there is the consent of two in the same agreed thing; - but others deny it, because as long as the offerer does not know the acceptance, he can revoke the consent previously given. Each opinion is probable; hence the matter must be defined by civil law or custom, which is not the same among various Nations.[1]

[1] Thus, in France, jurists generally teach that a contract does not have force until after acceptance has become known to the offerer (Planiol, II, n. 986); the same prevails in Germany, from art. 130 of the Civil Code.

II. On the Defects Which Can Harm Consent.

Certain defects can harm the validity of a contract, which impede consent from being perfectly free, and therefore render the contract either null or rescindable. There are three: error and fraud, by which the intellect is deceived; and force, or fear, by which the liberty of the will is injured.[1]

[1] Those things which we explain here from natural law are accepted among most Nations; but as regards particulars they must be completed from the various Codes. - For France, cf. *Cod. civ.*, a. 1109-1122, in *Supplem.*, p. 77*; Planiol, II, n. 1047-1076.

I. On Error.

625. 1. Notion and species. Error is a false judgment concerning some matter; speculatively indeed it differs from ignorance, which is the lack of knowledge; but practically and juridically error and ignorance produce the same effects. - It matters little whether the error is an error of law or an error of fact.

Error is substantial or accidental, according as it concerns the essence or the accessories of a contract. - In our matter, the essence or substance of a contract is that about which consent is principally borne.

Now error is held as substantial: (a) when it falls upon the very nature or species of the contract: e.g., if someone thinks the question concerns sale, while the question concerns lease; (b) when it falls upon the thing itself, e.g., Titius intends to sell such a white horse, while Caius wishes to buy another red horse; for then there is no consent concerning one and the same thing; (c) when it concerns a substantial quality, to which consent is attached, so that the consent would not have been furnished if it had been known that this quality was lacking; thus, e.g., he who buys a gilded chain as a gold one; he who procures new wine as old.

On the contrary, error is reputed accidental which concerns less principal qualities of the thing, to which the contracting parties do not attach their consent. - Yet it can happen that someone in fact, because of a special motive, attaches consent to an accidental quality; then it is called accidental error giving cause to the contract.

626. 2. Principles. (A) By natural law, substantial error renders a contract invalid. For he who errs concerning the substance of the thing, or the very nature of the contract, or a substantial quality to which he attaches consent, does not furnish true consent concerning the matter about which the contract is concerned.[2]

[2] By French law, error concerning a substantial quality makes a contract rescindable, but not null. Cf. Planiol, II, n. 1053.

627. (B) Accidental error of itself does not render a contract invalid; for, for the value of a contract, consent in the substance of the contract suffices; but this can consist with accidental error, which, as was said, does not fall upon the substance of the act, but only upon accessories.

I said: of itself; for it can happen that someone in fact attached his consent to some quality or accidental circumstance; then the error, although accidental, truly gives cause to the contract, and, in the internal forum, the consent is null. - But in the external forum, the contract is held as valid, unless from circumstances or explicit declaration this can be proved; for the security of commerce demands this; for if it were permitted to each one to rescind a contract by asserting, without any proof, that he had attached consent to such or such an accidental quality, scarcely any contract would exist whose validity was certain.

Hence if a priest buys blue cloth, thinking it to be black, for making a cassock, the purchase is null, because from the circumstances he attached his consent to the black color. But if someone, in buying a horse, erred about the color, without having manifested anything about his intention, the contract is valid, because from the circumstances one could not suspect that he wished to buy a horse of white color rather than red.

628. Corollaries. (A) Error concerning the person does not invalidate a contract, unless the consent of at least one of the contracting parties was attached to such a person, because of his special qualities or reasons; this is clear from what has already been said.

Thus if I buy a book from Victor, thinking him to be Jacob, the contract has force, because, as is supposed, the principal intention is to buy the book, by whomsoever it is sold; - but if I wished to have a painted picture from such a celebrated painter, error concerning the person invalidates the contract: in which case, however, the painter who in good faith began or completed the work must be furnished unharmed; - in gratuitous contracts, error concerning the person invalidates the donation, as often as this is made with regard to the person, so that someone wishes to give only to this person; otherwise, if the prevailing intention is to give something to the poor.

629. (B) Error concerning the extrinsic motive of the contract does not invalidate it, unless the pact was entered conditionally.

The matter is explained by example. Titius buys a horse, because he falsely thinks that his own horse has perished; but he is altogether silent about this motive: certainly the contract has force, because otherwise the security of commerce would perish; - he manifested the motive to the other contracting party, without however adding any condition to the purchase: more probably the contract has force, at least in the external forum, because a sufficient reason of paying the price subsists, namely the value of the horse; - but if he bought under the condition that the horse which he already has is dead, the contract is invalid, because the condition was not fulfilled.

II. On Fraud.

630. 1. Notion. When the error of one contracting party is induced by the frauds or fallacies of another, fraud is present. Therefore here we suppose that fraud is joined with error; for if the contracting party detects the fallacy and nevertheless contracts, consent is not vitiated. - But fraud can be substantial or accidental, as was said concerning error.

631. 2. Principles. (A) Substantial fraud renders a contract null by natural law; for it destroys consent. Besides, the deceiver is bound to repair the damage unjustly inflicted upon the deceived, from what was said above, n. 466 sq.

(B) Accidental fraud giving cause to the contract, that is, truly moving the other to contract, by natural law makes the contract not invalid, but rescindable, at the option of the deceived person. For, on the one hand, accidental fraud does not remove consent; but on the other, it unjustly injures the freedom of making a pact, and therefore the deceiver must repair this injury; but this can be done in no more efficacious mode than by making for the deceived party the faculty of seeking the rescission of the contract and compensation of the damage inflicted from this.

(C) Accidental fraud which in fact does not have influence upon the contract does not stand in the way of its validity, because it neither removes consent nor efficaciously injures freedom.

632. 3. Corollary. If a contracting party has been deceived by a third person, without the cooperation of the other contracting party, the contract will indeed be null by natural law, if the error was substantial; otherwise, it will be valid; - but in either case, the

damage inflicted upon the deceived person must be repaired by the deceiver, not by the innocent contracting party. The former is clear from what was said concerning error, n. 626; the latter, from what was said concerning the damager, n. 466.

III. On Force and Fear.

633. 1. Notion and species. (A) Force, or violence, is sometimes physical and absolute, when someone, e.g., is physically compelled to sign a contract against his own will: then by natural law there is altogether no contract. - But more often force is only moral and is produced by threats; it is usually defined: a motion brought from an extrinsic principle against the inclination of the will. In this sense, it does not substantially differ from fear, which from Roman law is described as: trembling of mind on account of some impending evil; - namely force is as it were the cause of fear: for when moral violence urges, the mind begins to tremble, or to fear.

(B) Fear is grave or light, according as the trembling of mind disturbs the mind more or less; hence subjectively, and in the internal forum, the gravity of fear depends on the trembling of mind itself; but objectively, and in the external forum, its gravity depends on the gravity of the evil itself which threatens.

Hence fear can be absolutely and relatively grave: absolutely, when the evil which is feared is so grave, certain, and impending that it can disturb a steadfast man; - relatively grave, when the evil of itself does not suffice for moving a man, but in fact seriously disturbs the contracting party, account being had of that person's age, sex, or condition.

But fear is light when the evil which is feared is light, or indeed grave, but not certainly or immediately impending, so that it does not seriously move the mind.

634. 2. Principles. (A) Extreme fear, which altogether disturbs the use of reason, by natural law invalidates a contract, since it removes the freedom necessary for contracting.

635. (B) Fear, even grave, arising from a natural cause, or justly impressed, does not invalidate a contract, provided it does not impede the use of reason. For, even if the consent is not perfectly free, but given with some repugnance, nevertheless it is furnished voluntarily and prudently; moreover no injury is done to the contracting party; therefore the contract is neither invalid nor rescindable.

Thus the contract has force of him who, in a fire or shipwreck, seized by fear, offers to another a sum of money so that he may be snatched from danger, provided the promised price is proportioned to the work furnished; or of him who offends another, and, from fear of penalty, promises money lest the matter be brought to the judge.

636. (C) Grave fear, unjustly impressed for extorting consent, by natural law invalidates gratuitous contracts, - but makes onerous contracts rescindable, at the option of him who suffered the fear. (a) It invalidates gratuitous contracts; for for the value of a gratuitous contract altogether free consent is required, since the cause of this contract is the liberality of the giver; but grave fear, by which consent is unjustly extorted, destroys this perfect freedom. (b) It makes onerous

contracts rescindable; for for the value of these pacts that freedom suffices which is required for undertaking a grave obligation; but such freedom can consist even with grave fear unjustly impressed; for although the mind is disturbed in some way, it can sufficiently apprehend the nature of the obligation which it undertakes, and freely embrace it. - Yet since injury is inflicted upon him who suffers grave fear, he can seek the reparation of damage by demanding the rescission of the contract.

We suppose in this case that consent was truly furnished; for if he upon whom fear is impressed furnishes only external assent, in order to avoid grave damage, the contract is null; thus, e.g., if a traveler promises money to a robber, in order to avoid death.

Besides, by positive law contracts entered with grave fear can be invalidated; thus by canon law religious profession, vows, or marriages entered from grave fear are invalidated.

637. (D) Grave fear unjustly impressed, not indeed for extorting consent, but for another end, makes a contract rescindable if it is impressed by the other contracting party, because this party is bound to repair the damage which he himself inflicted; thus if someone promised money to a calumniator so that he would abstain from defamation, he can rescind the contract. - But if grave fear of this kind was impressed by a third person, the contract is valid, because the contracting party himself inflicts no injury; thus if someone, attacked and terrified by a robber, promises money to a traveler coming by, so that he may be freed from this danger, he is bound to give the promised price.

638. (E) Light fear is not considered in the external forum; but in the internal forum it more probably invalidates gratuitous contracts, for which perfect liberty is required; and, according to some, makes onerous contracts rescindable when it truly was the cause why these were entered; but it by no means stands in the way of their validity if it did not give cause to them.

Art. III. On the Object, or Matter, of a Contract.

Consent, necessary for the value of a contract, must be concerned with some object; now the object of consent can be either a thing, or an action, or a passive submission, in which or to which a right can be acquired, in one word, whatever is the object of right or dominion.

[1] Lugo, disp. XXII, n. 304-309; Billuart, diss. I, art. 8-9; St. Alphonsus, n. 712-713; Beusch, cap. IV; Carriere, n. 209-244; Marres, lib. III, n. 135-150; Noldin, n. 515-517; *Supplem.* for France, p. 79*; Planiol, II, n. 997-1016.

639. Principle: In order that a contract be valid, the matter about which it is concerned must be: 1. possible and existing; 2. determinate; 3. proper to the contracting party; 4. licit and honorable.

1. Possible and existing. (A) Possible indeed; for no one can obligate himself to the impossible; hence if the thing is physically impossible, e.g., if someone promises to migrate to the moon, the contract is null; but if the thing is morally impossible, that is, very difficult, the contract has force, but no one is judged to wish to obligate himself unless he explicitly said this, e.g., if he expressly promised to climb a mountain whose ridge rises into a high peak. If the object of the contract is divisible, and partly possible, the contract has force as regards the possible part, because the useful ought not to be vitiated by the useless.

Sometimes the thing which was promised, from unforeseen circumstances, e.g., illness or wound, becomes impossible for the contracting party himself; nevertheless the contract of itself remains valid if the contracting party can furnish the same through another without grave inconvenience.

He who by his own fault brings it about that the matter of the contract becomes impossible (e.g., because he is guilty of negligence), is bound to repair the damage inflicted upon the other contracting party from this; otherwise, if he was culpable in no way, e.g., if without his fault there arises a general cessation from work (*greve generale*).

(B) Existing in reality or at least in hope; thus fruits of an orchard, not yet ripe, - crops, before they are white for harvest, can be sold; for even a right to a thing is something estimable by price; but if a thing exists neither in reality nor in hope, its dominion certainly cannot be transferred.

640. Corollary. Hence things which are not placed in commerce, nor estimable by price, cannot be the object of a contract.

Thus by natural law the following are outside commerce: things which cannot be occupied, such as air, the ocean, etc.; likewise those things which it is not licit to estimate by price, such as the votes of electors or judges.

By divine or ecclesiastical law certain sacred things cannot be sold, such as sacraments, sacred oils, indulgences.

Likewise by civil law certain things are prohibited from being bought and sold, e.g., those which pertain to public dominion, public offices and functions; concerning these the civil Codes can be consulted.

641. 2. Determinate or at least determinable; for no one can obligate himself to something altogether indefinite. Wherefore two things must be determined: the quality of the thing, at least as regards the species, and its quantity: but this sometimes is defined mathematically, e.g., if ten pounds of sugar are sold; sometimes morally, e.g., if someone for such a price promises to furnish the wheat necessary for the support of some family for an entire year.

642. 3. Proper to the contracting party; for no one can transfer to another a right which he himself in no way has; hence the donation or sale of a thing which a thief has unjustly taken away is invalid. - But if someone has a thing in hope, by natural law he can sell it; yet generally positive laws invalidate the sale of an inheritance which is expected from a person still surviving; and deservedly, lest either contracting party desire and procure the death of this person.

(a) Hence generally each one can promise something to be furnished by himself, but not by another. - Yet someone can contract with another concerning a thing to be furnished by some third party, insofar as he obligates himself to take care that the other give or do the thing concerning which the contract is made: if the latter refuses, he who obligated himself thus must furnish the other contracting party unharmed. Thus, in the partition of an inheritance, Charles can promise that his

absent brother Augustus will ratify the same; and under this head he is bound to take care that Augustus assent to the partition.

(b) A stipulation can be made between two contracting parties in favor of a third person; thus Titius can promise to pay a certain sum of money each year to an insurance company, so that, at the time when he himself dies, twenty thousand coins may be given to his nephew.

643. Corollaries. (a) When something is already owed to another from strict justice, one cannot contract concerning the same; thus a judge cannot accept something for a just sentence which from office he is bound to pronounce; for he obligates himself to nothing new, nor therefore under this head can he accept a price.

(b) But if something is owed from charity alone, or another virtue, a contract concerning the furnishing of this thing is indeed illicit, but not invalid; e.g., a physician, who from charity ought to furnish his work gratis to some poor man, validly makes a pact with the same about receiving some reward.

644. 4. Honorable and licit: for no one can obligate himself to something evil, nor demand that an illicit thing be done.

(A) Wherefore if two entered a pact concerning an illicit thing, or under a base condition, - e.g., I give you one thousand coins that you may kill Titius, or if you kill Titius, it is certain that the contract is invalid before the evil work has been perpetrated; and therefore neither contracting party is bound to fulfill it, but each is bound to recede from it; indeed, if the price for the base action has already been paid, it must be restored.

645. (B) After the work has been perpetrated, it is controverted whether one contracting party is bound to pay the promised price, and the other can licitly demand and retain it. - All indeed acknowledge that the price must be paid when the thing which was promised is good in itself, although from an accidental circumstance it was illicit; e.g., if a reward was promised to one working servilely on Sunday. - But the question is whether the same must be said when the matter concerns a thing evil in itself.

646. (a) The first opinion teaches that the contract is void, even after the work has been perpetrated, and therefore that the price is not to be paid, nor, if paid, can it be retained.[1] For 1) the promised reward is not owed as the price of the illicit thing, since this is not estimable by price, but rather worthy of chastisement; nor by force of promise: for a contract invalid from the beginning cannot be strengthened by the passage of time; 2) moreover the public good demands that such a price cannot be exacted: for if after the crime has been perpetrated it can be exacted, but not before, the evildoer by that very fact is induced to perpetrate the crime immediately, lest he be deprived of the agreed reward. Hence generally civil laws prohibit the promised price from being paid, because deservedly it is judged to be nothing other than an incitement to crime.

[1] Comitolus, *Resp. moral.*, l. III, q. 5; Carriere, n. 331-338, with many authors alleged there; Beusch, cap. IV, n. 272; Gousset, n. 753.

647. (b) The second opinion holds that, after the work has been perpetrated, the price can be exacted.[2] For 1) an illicit work, although by reason of fault and formally as a sin, is not estimable by price, nevertheless materially taken, insofar as it is an action useful or pleasant to one, but laborious and dangerous to another, can be estimated by price, and is worthy of reward. 2) Moreover the contract of which there is question is composed of two contracts, of which one is a promise concerning an evil thing (I promise you one thousand coins that you may kill Titius), but the other is concerning the paying of the price, if the evil work has been perpetrated (I give you one thousand for the killing of Titius); the former contract, as concerning an illicit thing, is invalid, but the latter has force, because it is not concerning an illicit thing, but concerning the paying of the price for a material work, which is estimable by price. 3) The Sacred Penitentiary seemed to confirm this opinion when it declared that a prostitute can retain the price of prostitution.[3]

[2] St. Thomas, 2. 2., q. 32, a. 7; q. 87, a. 2, ad 2; Lugo, *de Justitia*, disp. XVIII, n. 45-74; Billuart, diss. I, art. 8; St. Alphonsus, n. 712; Ball. P., n. 581-599; Noldin, 517, and others sufficiently commonly.

[3] Sacred Penitentiary, April 23, 1822, in Carriere, n. 338. Doubt: - "A prostitute who obtained a great sum of money by granting the use of her body to various lovers has very recently been converted. Is she bound to restore every price of her crimes, or only a part, or to spend it on pious works? And if she is held to either, is it from strict justice, or only from counsel? N. B. this prostitute, restitution having been made, would not be reduced to the greatest poverty." - The response was: "The penitent woman is not to be compelled, but to be exhorted, that she spend the price of prostitution, according to the judgment of a prudent confessor, for pious uses."

648. If it is permitted to disclose our mind, we think that the contract, even after the delict has been perpetrated, remains invalid: for a contract invalid from the beginning cannot be strengthened; and moreover the alleged distinction of a twofold contract does not seem to rest upon a solid foundation: for morally there is one contract, and, since the act is illicit from its own nature, the labor annexed to it cannot be said to be estimable by price. - But, if he who acted illicitly has suffered some damage, under this head he can receive proportionate compensation; thus perhaps the decision of the Sacred Penitentiary adduced above can be understood: namely, the prostitute can retain the price accepted as compensation for damage inflicted upon herself; and in the same way not a few theologians who favor the second opinion can be understood.

649. Practical conclusions. (a) Today, in most regions, civil laws declare invalid contracts entered concerning an illicit thing; and, since they were passed for the common good, they oblige in conscience, at least after the sentence of the judge. Therefore he who promised money for a dishonorable thing is not strictly bound to pay it, even after the work has been perpetrated: for he can use the benefit conceded to him by law, especially since, with natural law inspected, the matter is doubtful; but by natural law he must compensate damages which followed from this work, according to the principles explained above concerning the unjust damager.

(b) Moreover he who, after the work has been perpetrated, has accepted the price promised to him, can retain it with a safe conscience if it does not exceed the limits of just compensation owed to him for the damage inflicted; but if the price exceeds these limits, he is indeed to be exhorted, but not compelled, to restore this excess.

650. (c) If someone, without any pact, has accepted gifts which, all circumstances being considered, are given for this end, that the donee may be induced to sin, these are not necessarily to be restored from strict justice, because they can be regarded as gratuitous gifts. But restitution is altogether to be counseled, lest from the retention of the gift someone be enticed to sin; thus, e.g., an honorable woman who from the circumstances understands that many things are being given to her by a man so that she may act more freely with him, must firmly reject all these things if she wishes to remain chaste.

Art. IV. On the Subject of a Contract, or On the Capacity of Those Contracting.

651. I. By natural law all and only those can validly contract who enjoy the use of reason sufficient for understanding the obligation which they undertake: for for a valid contract on the part of the subject nothing else is required except free consent by which dominion can be transferred and an obligation undertaken.

[1] Lugo, disp. XXII, n. 280-303; Salmanticenses, Tr. XIV, *De Contractibus*, cap. I, n. 32-48; Haunoldus, Tr. VIII, cap. 3; Billuart, diss. I, art. 5; Beusch, cap. III, n. 21-226; Carriere, n. 174-203; Marres, l. III, n. 104-134.

Therefore by natural law the following are altogether incapable of contracting: (a) infants and children who have not yet attained the use of reason, but not those below puberty who already enjoy sufficient use of reason; (b) the perpetually insane; (c) the drunk and the furious at the time when they are not masters of their mind. - Less capable of contracting are the half-witted, and others who enjoy some, but not full, use of reason; and therefore it is altogether fitting that these should not be able to contract without a tutor or curator, who may furnish them counsel and help.

II. By civil law, prevailing among various Nations, all those can contract who are not prohibited by law. Now by positive law the power of contracting is limited for minors, interdicted persons, and wives, and indeed in a diverse way, according to diverse Nations.

652. For France, these things especially are to be noted: -

1. On Minors. These are those who have not completed the twenty-first year of age; they can be held in a threefold state: under paternal power, - under tutorship, - under curatorship.

(A) They are situated under paternal power when they are orphaned neither of father nor of mother, nor moreover are emancipated. - If they have their own goods, the father has the administration of them, and indeed the usufruct up to the eighteenth year of age (above, n. 146). - As regards contracts to be entered, they can furnish that which minors under tutorship can, with a few exceptions.

653. (B) Minors not yet emancipated, who are orphaned of at least one parent, are constituted under tutorship. - Tutorship is called: (a) legal, when by the law itself it is deferred to the father, the mother having died, - or to the mother, the father having died, - or to ascendants, both parents having died; (b) testamentary, which by the surviving father or mother, legitimately enjoying paternal authority, is deferred to someone to be exercised after the death of the one deferring; (c) dative, or nominative, which is deferred to someone by the family council, legal or testamentary tutorship being lacking.

Now minors cannot contract in their own name, but in all pacts are subject to the tutor, who acts in their name and administers their goods as a good father of a family. But the tutor can complete acts of mere administration alone; but acts of greater moment, only with the concurrence of the family council or tribunal added; indeed he is altogether prohibited from carrying out certain acts, as is explained more fully in the Supplement, p. 95* sq.

Acts entered by minors with all legal forms are valid and firm. But when forms of this kind are lacking, a distinction must be made: if common forms have been neglected, as is, e.g., the assistance of the tutor, the acts are rescindable, provided it is established that the minor was injured; if special forms were neglected, as is the consent of the family council, the acts are rescindable at the option of the minor and those having his cause, but not of the other party, even independently from injury; ten years are granted for seeking rescission.[1]

[1] *Cod. civ.*, art. 466, 1309, 1314; Planiol, II, n. 1081-1088.

654. (C) Emancipated minors are constituted under curatorship: this emancipation indeed is called tacit, or legal, when it happens by the law itself through marriage; and express, when it happens by a juridical act, with the explicit consent of the surviving father or mother, or of the family council.[2]

[2] *Cod. civ.*, art. 476-479, in *Supplement.*, p. 100*.

Emancipated minors indeed act in their own name, and can enter certain contracts of mere administration; but in matters of greater moment, they need the assistance of the curator, family council, or judge, according to the various prescriptions of civil law.[3] - But if, with the consent of parents or of the family council, they undertake the office of merchant, they alone can carry out all things which pertain to the business, if the alienation of immovable things is excepted.

[3] *Cod. civ.*, art. 481-484; 840; 935.

655. 2. On interdicted persons.[4] When adults, on account of weakness of mind or habitual dementia, are incapable of managing their goods, they can be interdicted by the authority of the judge: then they are constituted under a tutor, and contracts which they enter without the intervention of the tutor are rescindable, insofar as rescission of them can be sought, for ten years, by the interdicted persons themselves or their heirs. - But acts carried out before the judgment of interdiction can be invalidated if the cause of interdiction was already notorious at the time of the contract entered.

[4] *Cod. civ.*, art. 489-512, in *Supplement.*, p. 101*; Planiol, II, n. 1090.

Those akin to interdicted persons are those to whom a judicial council has been juridically given, namely prodigals and the half-witted, who cannot prudently manage their goods. For these cannot litigate, transact, borrow money, accept movable goods, alienate their goods, or subject them to mortgages, without the assistance of the aforesaid council; and if nevertheless they furnish this, their contracts are rescindable. But other contracts entered by them cannot be rescinded.[1]

[1] *Cod. civ.*, art. 513-515, *Supplement.*, p. 104*; Planiol, I, n. 2684-2725.

656. 3. On wives.[2] Wives who are still under the power of a husband cannot enter certain contracts without the special consent of the husband, or the authority of the judge; thus they cannot donate their goods among the living, alienate, grant a mortgage, or accept donations and successions. - Yet if they publicly exercise commerce, with the husband consenting, they can enter contracts which pertain to their commerce; even outside this case, they can be obligated by reason of delict or quasi-delict, - or by reason of domestic expenses, because, unless the contrary is established, the husband is judged to consent to these expenses. - Besides, under the dotal regime, the wife has the administration of her paraphernal goods (art. 1576), although she cannot alienate immovable goods (art. 1449-1538). - Finally, if the wife is separated from bed from her husband, she can now freely dispose of her goods, with dotal goods excepted.

[2] *Cod. civ.*, art. 215-226; Planiol, III, 254-326.

Contracts entered by a wife against these provisions of law are rescindable at the option of the husband, of the wife herself, and of their heirs, for ten years; unless however they have been confirmed by the wife, with the husband consenting. - The Law of July 1907 concerning the salary of wives must be kept before the eyes.[3]

[3] You will find the text of the law in *Suppl.*, p. 224a*.

657. 4. On moral persons, or societies which have obtained juridical capacity, there are various provisions of civil law, which often restrict too much their faculty of contracting. In a general way, since they do not exist except by force of civil authority, they can do nothing except what is permitted to them by concession of the law. - Now those societies which are called *etablissements publics* or *etablissements d'utilite publique* are constituted under the tutelage of the Government, especially as regards the acceptance of donations or legacies, as if they were minors.[4] - But private societies which are acknowledged by the Government, as civil or commercial societies, or guilds of workers, enjoy greater liberty in the administration of their goods.

[4] A. Hudelot, *Des obligations*, Paris, 1908, n. 104-129.

658. III. Moral principles concerning contracts of minors, wives, and interdicted persons. The question is whether all these can in conscience use the benefit conceded to them by law; namely whether they can seek the rescission of a contract, even when they were not injured; and whether, the contract having been rescinded, they can retain the thing accepted (e.g., money borrowed).

1. If they acted without fraud, or have not been made richer from the contract, they can use the benefit of the law, since the law was passed for the common good; - moreover those who contract with minors, interdicted persons, or wives ought to impute to themselves the damage inflicted, since they are warned by the law not to make pacts with these except under the conditions defined by the Code.

659. 2. But if minors, interdicted persons, or wives used fraud, pretending that they are capable, or if from the pact they have become richer, they must compensate the damage unjustly

inflicted by frauds, and restore the thing accepted in itself or in an equivalent: for then they are unjust damagers or possessors of another's thing.

Thus if a minor, already of mature character, falsely pretends that he is older by birth and borrows money, he must return it; likewise, he who is absent from the paternal home for the sake of studies and procures those things which are necessary for himself for honorable support; likewise a wife who borrows money for assisting her own and her family's necessities: for they have been made richer. - On the other hand, if minors, wives, and interdicted persons are known as prodigals, and spend the borrowed money uselessly by indulging in drinking and pleasures, neither these nor their parents or tutors are bound to restoring; for they have not been made richer from this, nor moreover have they used fraud. - Likewise, if someone in good faith handed over money by loan to some minor, thinking him worthy of trust, and the coins were consumed for useless uses, strictly speaking the minor is bound to nothing; but equity demands that compensation be given to the lender.

Art. V. On the Effects of Contracts.

From the very notion of contract handed down above (n. 613), it is clear that there is a twofold effect of pacts, namely the transfer of right and the production of obligation. But the former in practice is not distinguished from the latter, since a right in one person imports an obligation in another. Therefore we must treat of obligations: of their nature, species, and extinction.

[1] Lugo, disp. XXII, n. 187-248; Salmant., cap. I, n. 54-73; Billuart, diss. I, art. 6-7; Beusch, cap. 6; Carriere, n. 259-444; Marres, lib. III, n. 177-377.

I. On the Nature of Obligations.

A contract obliges to two things: directly, to furnishing that concerning which the pact was made; indirectly, to compensating the damages which followed from the non-execution of the pact.

660. 1. On the direct obligation of contracts. (A) A valid contract begets an obligation in conscience, even if its validity cannot be proved in the external forum; for it is deservedly held as a law as regards the contracting parties themselves, who freely entered the pact and undertook a moral obligation upon themselves.

(B) The nature and extension of the obligation depends on the will itself of the contracting parties, insofar as it can be understood from all the circumstances. - For contracts, as ordered to the common good, are to be entered and fulfilled in good faith; therefore they oblige to all those things which those making the pact intended. But their intention is gathered not only from the words employed, but also from the character of the persons, the usage of places, or civil laws. - But if, after all things have been carefully weighed, some doubt remains, a friendly transaction is to be advised.

(C) Contracts do not have obligatory force except between the contracting parties themselves, and those who hold their place; for no one incurs an obligation from a pact unless he has furnished consent to it.

(D) A rescindable contract obliges at least one contracting party until he who has the right of rescinding seeks rescission; but if rescission has not been sought within the time defined beforehand by law, the contract becomes firm, and binds the two contracting parties.

661. 2. On the indirect obligation of contracts. (A) By natural law, when the contracting parties, from theological fault, have not fulfilled the obligation undertaken, they are bound to compensate the damage which followed from this, because they are truly the unjust and culpable cause of this damage; but if the damage happened fortuitously, without any fault, the debtor is not bound to repair it, unless he has undertaken fortuitous events upon himself.

If damage arises from merely juridical fault, it certainly must be repaired after the sentence of the judge, from what was said above, n. 476; indeed probably, according to some, even before the sentence, because the contracting parties are judged to obligate themselves according to the sense of the law; but, according to the laws, damage must be repaired as often as fault even merely juridical is present. Yet the more probable opinion teaches that they are not bound except after the sentence of the judge, or at least after the petition of the injured person; for no one is judged to obligate himself morally beyond that which is required by natural law, unless he explicitly declared this.

(B) By French civil law, compensation is owed on account of non-execution of a contract as often as the debtor is in delay, and at the same time damage arises from juridical fault, or from the omission of ordinary diligence which the laws presume and require.[1] But generally he is not held concerning fortuitous event, unless he obligated himself to this, or some fault preceded the fortuitous event itself.[2]

[1] *Cod. civ.*, art. 1136, 1142, 1145-1155, in *Supplem.*, p. 80*; Planiol, II, n. 221-277.

[2] *Cod. civ.*, art. 1148, 1302, 1807, 1881, in *Supplem.*, p. 81*, 89*; Planiol, n. 231-233.

II. On the Species of Obligations.

Among the various species of obligations about which jurists discuss, there are two which it will not be useless to explain briefly, namely obligations confirmed by oath, and conditional obligations.

662. 1. On an obligation confirmed by oath. Sometimes the contracting parties, or at least one of them, obligate themselves to furnishing something under the faith of a promissory oath; it is asked whether from this a new obligation arises. To solve this, it must be kept in mind that an oath in this case is something accessory to the contract, since it is only added to it. Now a threefold hypothesis can be imagined, according as the contract is valid, invalid, or rescindable.

(A) If the contract is valid and firm, the oath adds another obligation to the natural obligation, namely the obligation of religion; and therefore, if it is broken, there will be a twofold malice, against justice and against religion. - But the obligation of the oath is not broader than the obligation of the contract, and, when the latter ceases, the former also ceases: for the accessory follows the principal.

(B) If the contract is invalid from natural or divine law, - because, e.g., free consent is lacking, or the object is illicit, - the contract does not become valid from the oath, which cannot supply consent nor be a bond of iniquity; - nor does the oath itself have force, since the accessory follows the nature of the act to which it is added.

663. (C) If the contract is indeed valid by natural law, but invalid or rescindable from civil law, a distinction must be made between the oath itself and the contract to which it is added: (a) the oath is valid, and therefore must be observed, unless a dispensation has been obtained from it. For he who sanctioned by oath a promise of doing something which is good in itself, - e.g., a minor who swore that he would not rescind a contract otherwise just, - is bound, by virtue of religion, to keep the promise: for the obligation arising from oath is grave, and moreover the minor, by not seeking rescission, does not undergo a grave inconvenience. But if a dispensation has been granted by ecclesiastical authority, now the obligation of religion ceases, and rescission can be sought.

(b) But it is controverted whether by such an oath the contract which was rescindable becomes firm and valid, and therefore immediately obliges the two contracting parties from the virtue of justice. Formerly by Roman civil law a contract was strengthened by oath; but today, in French law, and in many other codes, this is not admitted; and since the matter here concerns temporal matter, the provision of civil law can be observed in conscience;[1] and therefore he who, using the benefit of the law, seeks rescission of the contract does not injure justice, but only religion.

[1] But in sacred matters, which must be judged from canon law, by oath a contract otherwise rescindable becomes firm, because, as Alexander III says, "it is not safe for anyone to come against his oath, unless such an oath is one which, if observed, tends to the ruin of eternal salvation" (*Decret. Greg.* IX, lib. II, tit. 24, c. 8, p. 361, ed. Friedberg).

664. N. B. In the aforesaid cases it is supposed that the oath was freely furnished; but if it was so extorted by fear that it can in no way be called free, it is not valid, nor therefore adds any force to the contract; if fear did not remove deliberation of mind, more probably the oath has force, but a dispensation from it can easily be obtained. Hence if someone, from fear of death, promised money by oath to a robber, strictly speaking he is not bound to pay it, but for caution he can seek a dispensation from the oath.

665. 2. On conditional obligation. Sometimes a condition is added to a contract, and therefore the obligation is called conditional, insofar as it depends on the fulfillment of the condition. - The condition added can concern the present, the past, or the future. If it concerns the past or the present, even uncertain, it does not suspend the obligation, but at that very instant at which the contract is entered, the obligation exists or does not exist, according as the matter has happened or has not happened.

Therefore it remains to speak of the obligation which depends upon a future event. But this can be twofold: suspensive, when the existence of the obligation depends on the fulfilled condition; resolutory, when an obligation already existing at the time of the contract, afterward, the condition having been fulfilled, is resolved or removed, e.g., I sell you this horse, yet under this law, that the contract be null if war is stirred up within ten days. - Let us explain this briefly.

(A) On the effects of a suspensive condition. (a) Before the event, the obligation is suspended, and therefore the debtor preserves the dominion of the thing, while the creditor acquires only a conditional right. (b) When the condition has been fulfilled, the contract immediately becomes perfect, without renewal of consent, and the obligation is judged to have existed from the day of the contract entered. (c) When the condition is lacking, the contract is judged to have been invalid from

the beginning, and therefore to have begotten no obligation; hence if the thing had already been handed over, it must be restored with the fruits received.

666. (B) On the effects of a resolutory condition. (a) Before the event, the contract is held as valid, and the debtor is held by the same obligations as if the contract were firm; thus he must furnish or hand over the thing promised. (b) When the condition has been fulfilled, the contract is dissolved, without any sentence of the judge, and therefore the obligation arising from it is judged never to have existed. (c) When the condition is lacking, the contract becomes altogether firm, and from it the same obligations arise as if no condition had ever been added.[1]

[1] *Cod. civ.*, art. 1168-1184; *Supplem.* for France, p. 83*-89*; Planiol, II, n. 374-388. - On obligations for a day, alternative, in solidum, divisible and indivisible, with stipulation of penalty, see *Cod. civ.*, art. 1185-1233.

III. On the Extinction of Obligations.

667. 1. Various modes are enumerated. Obligation can be extinguished in many ways, namely:

(a) by prescription, concerning which it was said above, n. 243;

(b) by rescission of the contract, when a rescindable contract is dissolved by the authority of the judge; or by annulment, when it is declared invalid by the judge;

(c) by payment of the debt, or the furnishing of the thing concerning which agreement had been made;

(d) by condonation, when the creditor remits the debt;

(e) by compensation, which obtains place as often as both contracting parties owe to each other the same quantity of money or of fungible things;

(f) by confusion, when the obligation of the debtor and the right of the creditor come together in the same person, e.g., through testament or succession;

(g) by the destruction of the thing owed, namely as often as the certain and determinate thing which was owed is destroyed or lost without the fault and delay of the debtor.

Concerning these you will find more in the civil Codes.[1]

[1] For France, *Cod. civ.*, art. 1234-1314; *Supplem.*, p. 84*-89*; Planiol, II, n. 399-629.

668. 2. Moral questions. But here moral questions occur concerning payment and cession of goods, when the debtor is unequal to paying all debts: 1. whether he can retain something; 2. what order must be preserved among creditors; 3. whether cession of goods removes the moral obligation of paying debts fully.

(A) Whether a debtor, unequal to paying all his debts, can retain something for himself?

It has already been said above (n. 600-602) that inability, whether absolute or moral, excuses from restitution as long as it lasts; from which it follows that the debtor by natural law can retain for himself those things which are necessary for the honorable support of himself and his own, yet living sparingly.[2] But he is bound honestly and sincerely to cede other goods to his creditors. Hence: -

[2] Not a few think, with Noldin (n. 509), that they are not guilty of injustice who reserve for themselves means by which they can begin another business from small beginnings. For the beginning of some business can be referred to honorable support; moreover the good of society itself demands that honorable cessionaries of goods be able to begin a new business, lest they fall into despair and be rendered useless or harmful to society. - As regards French civil law, cf. *Cod. Commer.*, art. 530.

(a) Those gravely sin against justice who, besides the goods necessary for themselves and their own, conceal certain other goods and withdraw them from creditors, whether by carrying them elsewhere, or by selling them and placing the money obtained from this in safety; likewise husbands who fictitiously sell their own goods to their wives, so that they may afterward enjoy them; in one word, all those who by various frauds withdraw from creditors goods owed to them. - Yet those can be excused who secretly retain certain things most precious to themselves, on account of the memory of parents or friends, and which others esteem lightly, especially if there is a founded hope of afterward refunding the price to creditors.

(b) Those become participants in the injustice of the debtor, and therefore as unjust cooperators are bound to restitution, who concur with him in defrauding creditors, provided they are conscious of the bad faith of the debtor.

669. (B) On the order to be preserved among creditors. By natural law, the goods of debtors must be divided equally among the various creditors, unless some special reason stands in the way. Now certain creditors, from civil law, must be preferred to others; but the law, although it is diverse in various regions as regards certain particulars, commonly establishes the following, especially in France.

(a) Things belonging to another, namely stolen, deposited, rented, lent, found things, etc., which still exist in themselves, must be restored to their owner, even if nothing remains for satisfying the creditors; for the thing cries out for its owner. - But if the thing exists only in an equivalent, the creditor is not to be preferred to others, because he has only a personal right, and not a real one.[1] - These prescriptions indeed are altogether consonant with reason.

[1] *Cod. civ.*, art. 2092-2093.

(b) Secondly, judicial expenses must be paid for the operations by which the goods of the debtor have been changed into money.[2]

[2] *Cod. civ.*, art. 2101. Planiol, II, 2552-2553, 2623-2624.

670. (c) Thirdly, the chief taxes must be paid (*contributions directes, impot du timbre, contributions indirectes*).[3]

[3] Planiol, II, 2643.

(d) In the fourth place come creditors privileged by a special privilege, who are compensated by means of money brought in from movable things, e.g., pledge-holders (*gagistes*), lessors of immovables (*bailleurs d'immeubles*), according to the order fixed by law.[4]

[4] Planiol, II, 2542, 2627, 2634, 2636.

(e) In the fifth place, creditors privileged by a general privilege, who are compensated from the remaining movable goods and then from immovables, the following order being observed: 1. funeral

expenses; 2. physicians' fees; 3. expenses for the nourishment of an infant (*mois de nourrice pour enfants eleves hors de la maison*); 4. wages; 5. debts for sustenance (*fournitures de subsistances*); 6. indemnities for fortuitous cases (*accidents industriels*).[5]

[5] Planiol, II, 2642.

(f) In the sixth place, mortgage creditors by a privileged mortgage, e.g., *vendeur d'immeuble*, *copartageant*, architects, contractors.[6]

[6] Planiol, II, 2628, 2886.

(g) Seventh, mortgage creditors by an ordinary mortgage, with the order of the day of registration of the mortgages being preserved, if registration is required.

(h) Eighth, the other taxes (*debets des comptables*, *droits de douane*, *frais en matiere penale*).

(i) Ninth, merely chirographic or common creditors.

671. N. B. From what has been said, there are nine orders of creditors; now the civil law, in force in France and many other States, decrees: (a) that the prior class of creditors must be satisfied fully before creditors of a later class receive anything; (b) that in the same class of creditors, each must be satisfied according to the proportionate part of the debt.

672. Things to be noted for the forum of conscience. (a) The prescriptions of civil law in this matter are determinative of the right of property, and therefore bind in conscience, at least more probably, even before the sentence of the judge.

(b) Moreover, in many regions, it is established by civil law that the payment of debts not yet demandable is invalid, or even the payment of demandable debts made in another manner than in money or commercial notes, after the date of cessation of payments defined by the judgment of the tribunal, indeed within a few days (in France, within ten days) before this declaration; and rightly so, lest the debtor unjustly favor certain creditors before others; accordingly these statutes bind in conscience, at least after the sentence of the judge.[1]

[1] Moreover it is provided by civil law, in the case of judicial cession of goods, that certain creditors should not enter into any pact with the debtor favoring themselves, to the detriment of others. For France, cf. *Cod. commerc.*, art. 597-598; ibid., art. 437-614, one may read those things which regard *la faillite*, *la banqueroute*; cf. Law of March 4, 1889, on judicial liquidation, in Riviere, *Lois usuelles*, p. 1019-1021.

(c) Outside the cases determined by law: 1. it seems certain that debts from an onerous title must be paid before debts from a gratuitous title; 2. it is commonly admitted that certain debts are to be preferred to uncertain debts, and a certain creditor to an uncertain one; 3. charity and equity counsel that the poor be preferred to the rich, and that older debts be paid first, but it is not established that this is required from justice. - Hence probably it is permitted to satisfy first a creditor who petitions first, even if he is later in time, even with prejudice to others.

673. (C) Whether cession of goods or an agreement with creditors extinguishes the moral obligation of paying debts?

State of the question. Sometimes a debtor unequal to paying all his debts hands over all his goods to the creditors, so that from them the debts may be paid according to a proportionate part; this is

called voluntary when it is done spontaneously and accepted by the creditors; but judicial when it is imposed by the judge even against the will of the creditors; culpable or inculpable, according as the debtor has become unequal to paying debts from his own fault or from mere misfortune. Sometimes also an agreement is made with the creditors, by force of which the debtor promises to pay a proportionate part of the debts, according to his means. - These things being posited, the question arises whether the debtor who has handed over all his goods to the creditors, or has entered into an agreement, but has not paid the debts fully, is excused in conscience from the obligation of restitution if afterward he becomes richer.

674. Principles. By natural law, cession of goods of itself does not remove the obligation of paying debts fully, but only excuses from restitution for a time, on account of the debtor's inability (above, n. 600); whence the obligation afterward to make restitution remains, unless the creditors explicitly or implicitly remit the debt (above, n. 606).

(a) Moreover, according to all, if someone by his own fault has become unable to pay debts, he is not dispensed from the obligation of making restitution, since he is an unjust damager, and besides, the creditors are not judged to condone the debt in such a case.

(b) But if someone has become unequal to paying through mere misfortune, a distinction must be made; if the cession is voluntary, and the creditors freely and explicitly declare that they wish to demand nothing further, there is no difficulty, since such a declaration is rightly held as a remission of the debt. But if it is judicial, the solution depends on the intention itself of the legislator; thus, in France, it is established that the debtor is not freed except according to those things which he pays, so that if he acquires new goods, he is bound to give them up until full payment.[1] But in certain other regions,[2] the law does not decide the matter so openly, and the common persuasion has prevailed that a debtor who has honestly handed over all his goods to the creditors is immune from every obligation of restoring anything further; for, on the one hand, merchants receive greater profit because of the peril of the lot, and therefore readily consent to such a loss; and on the other, the public good demands that unfortunate debtors, otherwise honest, should be enticed to begin a new business by the hope of retaining profit for themselves. This indeed can be tolerated where the law is really so understood or where custom prevails.

[1] *Cod. civ.*, art. 1270, in *Supplem.*, p. 86*. We think that this also holds in the case of an agreement with creditors.

[2] Thus in England, according to Crolly, III, n. 1202; cf. Lehmk., n. 1035; id., *Casus*, t. I, n. 773; Noldin, n. 509.

But an honorable man will strive with all his powers to pay his debts fully; moreover, if any creditors have fallen into poverty thereby, charity and equity demand that full satisfaction be given to them, insofar as this can be done.

The remaining matters we shall now explain in the chapter on contracts in particular.

Part II — Chapter II: On Contracts in Particular

Chapter II. On Contracts in Particular.

Among contracts, some are gratuitous and others onerous; but the latter are either of certain or of uncertain outcome; whence we shall speak: 1. on gratuitous contracts; 2. on onerous contracts of certain outcome, which are also called commutative; 3. on onerous contracts of uncertain outcome, or aleatory contracts.

Art. I. On Gratuitous Contracts.

675. The principal gratuitous contracts are promise and donation; to these is added testament, which, although properly it is not a contract, but an act, is nevertheless so akin to donation that it is opportune to discuss it immediately after donation; and since successions are intimately connected with testaments, we shall likewise treat of them in this article: -

On promise.

On donation.

On testaments.

On those things which are common to donations and testaments.

On successions.

There are other gratuitous contracts, such as loan for use, loan for consumption, deposit and sequestration, mandate and management of affairs, concerning which the civil Codes can be consulted, in which are set forth rules having force also in the forum of conscience.

§ I. On Promise.

676. I. Notion. A gratuitous promise is a contract by which someone gratuitously obligates himself to furnish something to another. Hence for a valid promise three things are required: -

[1] Lessius, lib. II, cap. 18; Lugo, disp. XXIII; Salmant., cap. IV, n. 65-86; Billuart, diss. II, art. 1; St. Alphonsus, n. 720; Carriere, II, n. 472-485; Marres, lib. IV, n. 1-12; Ball. P., n. 626-630; Lehmk., n. 1081-1082; Noldin, n. 536-537.

(a) The intention of obligating oneself, and thus a promise is distinguished from a mere purpose, by which someone indeed intends to do or omit something, yet without wishing to assume a true obligation; wherefore he who does not keep a purpose is indeed guilty of inconstancy, but offends neither fidelity nor justice; - it likewise differs from donation, in which the thing itself is given immediately, while in promise an obligation is assumed of furnishing the thing at a future time.

(b) A spontaneous will, that is, immune from every error, fear, or force, since promise, as being a gratuitous contract, proceeds from liberality, and therefore requires full liberty.

(c) That the promise be manifested externally, and accepted by the promisee, namely by him to whom the thing is promised.

677. II. The obligation arising from promise. 1. According to all, an onerous promise, namely one made with an added condition that the promisee sustain some burden in order to obtain the promised thing, truly obliges from justice, and indeed of itself under grave matter, since it is an onerous contract. The same must be said of a mutual promise, which is made in betrothals, as is explained in the treatise on Marriage, n. 142.

2. But when the matter concerns a gratuitous and unilateral promise, it is controverted whether this obliges from justice or from fidelity, and indeed under grave or under light matter.

According to the more common opinion, the nature and gravity of the obligation depend on the intention of the one promising; for promise is a certain particular law which the promisor freely imposes upon himself according to his choice; wherefore it induces that obligation which he himself establishes: if he intends to bind himself only from fidelity and under light matter, he is obligated only under light matter and from fidelity; but if from justice and under grave matter, in the same way he is obligated from justice and gravely. - But the intention of the one promising must be judged both from his declaration and from the circumstances. - If the matter is doubtful, it must generally be inferred that the obligation is only from fidelity and under light matter, because an obligation of justice is not to be presumed, but must be proved. - Yet an honorable man stands firmly by his promises, whatever his intention may have been.

678. Now, since today civil laws require certain solemnities for the validity of a gratuitous promise, the intention of obligating oneself from justice is generally judged to be absent if formalities of this kind are omitted.[1] - Indeed promises which are uttered for the sake of boasting or from mere civility, and also promises that are wholly general, induce no obligation, because the intention of obligating oneself is lacking.

[1] By French civil law nothing special is defined regarding promise in general; but, from art. 1134, all legitimate agreements have the force of law for those contracting, provided these are certainly established; moreover, from art. 1589, a promise of selling something truly obliges in justice when there is mutual consent concerning the thing itself and the price; cf. Planiol, II, n. 1398-1410.

Nevertheless it can happen, from the circumstances, that a promise, even expressed by words alone, induces an obligation from justice, namely as often as violation of the promise brings harm to the promisee; thus, e.g., if a physician has promised to assist a certain sick person, and the latter, relying on such a promise, has called no other physician; or if a brother has promised his brother to pay half the expenses for the education of a nephew, if the latter enters such a college. This indeed appears still more if an oath is added to the promise, or the promise is signed.

He who promised an illicit thing contracted no obligation: "by promising he sinned, but by changing his purpose he does well."[1]

[1] St. Thomas, 2. 2., q. 110, art. 3, ad 5.

679. III. Cessation of the obligation. A promise, even valid and obliging from justice, falls away: (a) if there supervenes or becomes known a change of things which, if it had been foreseen before the promise, would have impeded it; for it is judged to have been made under the tacit condition that it can be fulfilled without grave inconvenience; (b) if the promisee

spontaneously condones it; (c) if, when the promise was mutual, the other has not stood by the promises.

When, before the execution of the promised thing, the promisee dies, the promisor is held to nothing, if he wished to benefit solely or principally the promisee himself; but if principally his family, the obligation does not expire. - If the promisor dies before execution, a personal promise, that is, concerning an action to be personally furnished, does not oblige the heirs; if it is real, that is, concerning a thing to be given, it passes to the heirs, unless from the circumstances it is clear that the promisor did not wish to obligate them.

§ II. On Donation.

680. I. Notion and elements. Donation in general can be made in three ways, namely among the living, by reason of death, and by testament: in the first case, the transfer of dominion is made actually and irrevocably; in the second actually, but revocably until death; in the third, dominion is transferred in the future, for the time which follows the death of the testator, and at the same time revocably.

[2] Lugo, disp. XXIII; Salmant., cap. IV, n. 87-118; Billuart, diss. II, art. 2; St. Alphonsus, n. 721-743; Carriere, n. 487-491; n. 450-558; Marres, lib. IV, n. 13-90; Ball. P., n. 631-658; Lehmk., n. 1084-1086; Noldin, n. 538-541.

Here we are treating of donation among the living, which can be defined as a gratuitous contract by which dominion of some thing is transferred to another actually and irrevocably.

Three things therefore are found in donation: (a) the transfer of some thing, or right; (b) gratuitous, and thus it is distinguished from exchange or sale; nevertheless sometimes some burdens are imposed on the donee, and then there is a mixed contract, partly gratuitous and partly onerous; (c) actual and irrevocable, insofar as goods or rights are transferred at once, and indeed in such a way that they cannot be revoked except in cases expressed by law; thus donation is distinguished from promise, by which rights are not transferred actually, and from testament, by which rights are conferred neither actually nor irrevocably.

By natural law, for a valid donation, it is required and it suffices that the thing be given by one who is capable of giving, and accepted by one who is capable of receiving, according to the things said above concerning contracts in general. - But other conditions are required by civil law.

681. II. Prescriptions of civil law. 1. In France[1] donation properly so called is held as a solemn contract, for the validity of which special forms are required, so that it can be certainly established, and its irrevocability be placed in safety.

[1] *Cod. civ.*, art. 931-952, in *Supplem.*, p. 109*; Planiol, III, n. 2501-2676.

(A) Two conditions are necessary for any solemn donation: (a) that it be made before two notaries, or before one notary and two witnesses, and that the protocol (*la minute*) be preserved with the notary; (b) that acceptance be given explicitly in the same manner, so that the donation does not have force except from the day of acceptance.

(B) Two conditions, moreover, are desired for certain contracts: (a) for movable things, an estimative inventory of all things which are given, in which the individual things and their price are described;

(b) for immovable things, which can be subjected to mortgage, the act of donation and acceptance must be transcribed before the conservator of mortgages; nevertheless, the defect of transcription does not render the donation invalid, but only rescindable; but rescission cannot be sought by the donor himself, but by those whose rights were harmed through the donation.

682. 2. From these formalities, however, certain donations are immune: -

(a) Manual donations, which are perfected by delivery alone of the thing; their validity is recognized even in the external forum, provided they are made by a capable person and do not exceed the disposable part (concerning which below). This indeed today is of the greatest importance, since there are many movable things which can thus be transferred from hand to hand.[1]

[1] When manual donations exceed 150 francs, they indeed cannot be authentically proved except by a written document; but proof of this kind is not necessary, since the possessor of a movable thing is held as owner, by force of art. 2279: "In the matter of movables, possession is equivalent to title."

(b) Donations under the appearance of simulated purchase, when someone, e.g., sells some thing for the price of one hundred thousand francs, and by the same act makes a condonation of this money, or of part of it; this indeed today is held as valid by magistrates, provided the donor is capable of giving, and the donee capable of receiving.

(c) Accessory donations, that is, those which are joined to an onerous contract in favor of a third party; e.g., Titius sells a house to Caius for 50,000 francs, under the law that Caius give 10,000 francs to Sempronius; this stipulation is held as valid by jurists.

(d) Donations which are made by way of renunciation, as if a creditor remits a debt, or an owner renounces some servitude, or a legatee some legacy, etc.; all these have force, provided they are made in the manner defined by law, e.g., if remission of a debt is made by destroying the note in which proof of the debt is contained.[2]

[2] On these, see Planiol, III, n. 2535-2555.

683. 3. Although donation of itself is irrevocable, in three cases it can be revoked: (a) if the donee has been judged guilty of notable ingratitude toward the donor; (b) if a son is afterward born to the donor who, at the time of the donation, lacked offspring; (c) if in an onerous donation, the conditions imposed on the donee have not been fulfilled at all.[3]

[3] Cf. *Cod. civ.*, art. 953-966, in *Supplem.*, p. 112*; Planiol, III, n. 2628-2676.

684. III. To be noted for the internal forum. Donations valid from natural law, but null from defect of legal forms, can be held in the internal forum as valid until they are rescinded by the judge; when rescission has been pronounced, this sentence must be obeyed if the matter concerns profane things (above, n. 618); when the matter concerns pious causes, what is to be done can be inferred from the things which we shall say where we treat of testaments, n. 698.

685. IV. On donation by reason of death. By this name is called a gratuitous contract by which something is actually given to another, yet in such a way that the donation can be revoked until the death of the donor. It is therefore distinguished from donation among the living, which

cannot be revoked except in the cases expressed by law; and from testament, by which the right is not actually transferred, but only after death; and therefore it is something midway between donation and testament, - and can be called a conditioned donation, insofar as it is made under the condition that it have force if it is not revoked before the death of the donor.

Today, in France and certain other States, a contract of this kind does not have force, because donation is held as essentially irrevocable, except in the cases excepted by the law itself. But a donation can be made under the condition that it be resolved if the donee should die before the donor.[1]

[1] Planiol, III, n. 2522.

§ III. On Testaments.

686. A testament is a revocable act, by which the testator disposes of his goods, or of a certain part of them, for the time following his death. - It is distinguished from donation: (a) because it is an act, not properly a contract; for it is not an agreement between the testator and the legatee, but an act by which the testator expresses his will, independently of any pact with another; (b) because it is essentially revocable until death, while donation is of itself irrevocable; (c) because it does not transfer rights actually, but only for the time following death. - We shall speak: 1. on the right of making a testament; 2. on the legal forms required for the validity of a testament; 3. on the rights and burdens of legatees; 4. on the cessation of a testament.

[2] Molina, tr. II, disp. 124-141; Lugo, disp. XXIV; Salmant., tr. XIV, cap. V, n. 1-76; Billuart, diss. II, art. 3; St. Alphonsus, n. 919-931; Carriere, n. 497-499; 559-605; Marres, lib. I, n. 294-380; Ball. P., n. 964-1083; Lehmk., n. 1160-1170; Pothier, *Donations testamentaires*, Paris, 1777; Troplong, *Traite des donations et testaments*, Paris, 1865; Baudry-Lacantinerie and Colin, *Des donations et des testaments*, Paris, 1899.

I. On the Right of Making a Testament.

687. Socialists deny the right of making a testament, since they reject the legitimacy of private dominion.

Concerning the origin of that right, there is keen dispute among theologians and jurists. (a) Some say that it arises from natural law, both because it has been in use among various nations from the most remote times, and because it seems to be morally necessary for the good of society, that the industry of men may be fostered.[3] (b) Others, on the contrary, teach that the faculty of making a testament must be derived from civil law; for, if natural right alone is considered, the transfer of dominion through testament is invalid, since dominion is transferred only after death, that is, at a time when the testator has already lost the right of dominion, since death dissolves all rights.[1] (c) Whence others, proceeding by a middle way, contend that the faculty of making a testament is indeed founded in natural law, but does not receive full force except from civil law;[2] whence it follows that it cannot be taken away by positive law, but only restricted. - What we think the following thesis will declare.

[3] Grotius, l. II, c. VI, n. 14; Wolf, *Instit. juris nat.*, § 927; Molina, disp. 134, n. 12.

[1] Puffendorf, l. IV, c. 10, n. 4-8; Zallinger, *Instit. jur. nat.*, § 120; Pothier, op. cit., c. I; Beusch, cap. I, n. 89.

[2] Carriere, n. 498; Taparelli, *Essai de Droit naturel*, Paris, 1875, n. 787.

688. Thesis: The right of making a testament flows from natural law, insofar as it is the legitimate complement of the right of private dominion.[3]

[3] To understand the thesis rightly, one should see what we said above, n. 74, on the right of private dominion.

It has already been demonstrated above (n. 74) that private dominion, permanent and exclusive, flows from natural law, and in the present state of things is morally necessary; but the right of making a testament is nothing other than the legitimate complement of private dominion, and for the same reasons is morally necessary in the present order of things: (a) it is the complement of private dominion; for dominion of this kind, as being exclusive and permanent, includes the right of disposing of one's thing at any time, and indeed in perpetuity, and therefore the right of disposing of one's own goods before death, and for the time following death.

689. (b) Besides, such a right is morally necessary for the common good; for unless a man could freely leave his goods to sons, relatives, connections by marriage, or friends, he would for the most part indulge in idleness and pleasures as soon as he had sufficiently provided for his own necessities; while on the contrary, if he can leave his wealth to others dear to him, he will not cease to produce new things and to increase riches, so that he may be able to assist the future necessities of relatives or friends.[4] In reality, man, desirous of surviving in others and through others, longs to leave lands, houses, and other wealth to those who are most beloved to him, and on this account works assiduously and diligently, that he may lavish something of himself upon them and contribute to their happiness. Now the whole society receives no small advantage from these efforts, by which common wealth is greatly increased.

[4] "Numerous in this world, let us say it to the honor of human nature, are the men who work and who save less for themselves than for others. If you force them to think only of themselves, they will work less and spend more. What riches in this case thrown into unproductive consumption by a broader manner of life! What years withdrawn from productive labor by a premature retirement!" (Ch. Gide, *Principes d'Economie politique*, p. 421.)

Moreover, if the right of making a testament is taken away, the goods of the dead either become the property of the first occupant, or are devolved to the State: in the former case, there will be a most bitter struggle among citizens for occupying these ownerless goods, and therefore the greatest disturbance; in the latter case, there will soon arise all the evils which it was proved above (n. 93-98) would follow from collectivism.

690. Difficulties are solved. (A) Some jurists contend that a transfer of dominion cannot be made through testament, because there is not present a simultaneous consent of the testator and the legatee: for the testator is already dead when the legatee accepts his goods.

Some respond that the consent of the testator perseveres virtually after death, or that the acceptance of the legatee is rightly presumed before the death of the testator; but these responses are rejected by many as having little force.

This solution seems more probable to us: simultaneous consent is indeed required for the validity of a contract, but not for the validity of an act, which is called a testament; moreover, a testament is as it were a conditioned donation, which will have force as soon as the legatee accepts it; it can therefore be repudiated, and then it will have no force; but if it is accepted, it then becomes altogether firm. - Besides, if, considering natural law alone, a donation of this kind did not have full force, civil

authority can supply for natural law, and can attribute legal force to an act which brings such great utility to the good of society.

691. (B) But socialists contend that by the right of making a testament the idleness of children of families is fostered, and the natural equality of men is destroyed.

Resp. (a) That there are some children of families who indulge in idleness and lust because they expect a fat inheritance, sad experience surely establishes; but this is an abuse, which neither always nor necessarily follows from the right of making a testament; and therefore the abuse must be removed or at least diminished, but the very right of making a testament is not on that account to be denied.

Indeed, to all, especially to younger persons of either sex, the necessity and dignity of labor must be inculcated, not only by words and examples, but also by deeds, namely by giving more to those who labor more strenuously; and also by a manly education, by seeing to it that even the richer learn and exercise some art. Let it be shown to the same persons that idleness is injurious to God, who commands all, even the richer, to labor: "In the sweat of your face you shall eat bread[1]... If anyone is not willing to work, neither let him eat[2]"; - dangerous to the idle themselves; for, Scripture testifying, "idleness has taught much evil[3]"; and moreover, experience establishes that those who indulge in leisure soon lose their wealth, because, as the negligence of the idle increases, the revenues from lands or from other capital gradually diminish; - harmful to society, since the republic is deprived of all those resources which those persons could have acquired by laboring. - By these and similar means, young men, even the richer, will for the most part be induced to work strenuously, and will become useful no less to society than to themselves.[4]

[1] Gen., III, 19.

[2] II Thess., III, 10.

[3] Eccli., XXXIII, 29; cf. d'Hulst, Confer. 1896, p. 264.

[4] Not a few adolescents in France remain idle because they do not wish to exercise public office under leaders most hostile to religion; but are there not countless arts wholly independent of the State, in which, by exercising themselves, they may serve religion and the fatherland at the same time? Cf. V. Bettencourt, *Du Choix d'une carriere independante*, Paris, 1903.

692. (b) But the equality which the socialists champion is impossible, as there is no one who does not see: "For there are in men, as Leo XIII rightly says, very many and very great natural dissimilarities: the abilities of all are not equal, nor skill, nor health, nor strength; and from the necessary difference of these things a disparity of fortune follows of its own accord."[5]
Moreover, experience establishes that this inequality is beneficial to society: for for the good ordering of the republic there must be diverse offices, to the performing of which citizens are impelled by disparity of fortunes; otherwise all would desire to command, no one would wish to obey.

[5] Encycl. *Rerum Novarum*.

Moreover, the faculty of making a testament, while it favors a certain inequality, greatly contributes to the good of society; for the richer, who do not need labor for daily sustenance, can devote themselves to the liberal arts and promote intellectual and moral progress; they can more effectively

amplify industry and commerce, by favoring new experiments, for which an abundant sum of money is desired; likewise they can erect many institutes useful to the whole community, and in many places really have founded them; and all these things are generally managed in a happier manner by private persons than by the State itself.[1]

[1] P. Leroy-Beaulieu, *Traite d'Economie Politique*, t. IV, p. 282-296.

II. On the Legal Forms Required for the Validity of a Testament.

693. 1. State of the question. By natural and canon law nothing else is required for the validity of a testament, on the part of form, except that there be moral certainty concerning the last will of the deceased. But by civil law various conditions are required among various nations.

Nevertheless, in almost every nation, certain privileged testaments are admitted, which, even if made without legal forms, are valid, provided that the will of the testator is established; thus generally the testaments of soldiers, or of those journeying across the sea, or in a time when an epidemic disease rages.[2]

[2] For France, *Cod. civ.*, art. 981-998; Planiol, III, n. 2725. But, even in these cases, it is safer to write a holographic testament whenever this can be done.

694. 2. Prescriptions of civil law in France.[3] According to French law, a testament can be threefold: holographic, solemn, and mystic.

[3] According to French law, two or more persons cannot make their testament by the same act, but each must declare his last wills by a special act. (*Cod. civ.*, art. 968, in *Supplem.*, p. 114*.)

(A) A holographic testament, from the words *holos* and *grapho* (I write the whole), is that which has been written entirely by the hand of the testator, with notation of the day, month, and year on which it was made, and with the subscription of the testator. Whence, for its validity, three things are essentially required:

(a) that it have been written entirely by the hand of the testator, with no word excepted. Interpositions (interlineations) added by the testator's own hand do not vitiate the testament; additions made in the margin are valid, even if they were not signed, if they were written at the same time as the testament itself; but if afterward, and they contain new dispositions, they must be signed, with inscription of the day, month, and year. Erasures (*ratures*) which are established to have been made by the hand of the testator invalidate only the dispositions which were deleted. - Interpositions or marginal additions made by another hand, but without the testator's knowledge, do not vitiate the testament; otherwise, if the testator consents.

(b) That the day, month, and year on which the testament was made be rightly designated, at the beginning or end of the document, before his own name is signed.

This indeed is required so that it may be known whether it was written by the testator at a time when he was capable of making a testament, and which of two or three testaments is valid. - It must be noted that not a few testaments are declared invalid, either because the designation of the day was

omitted, or because it was not rightly or sincerely made. - Designation of place is not necessary, although it can be useful.

(c) That the testator place his name by his own hand at the end of the document; therefore dispositions placed below the signature are null, unless they are signed.

695. N. B. A holographic testament is indeed best, since it is liable to few causes of irritation; but, because it can easily be taken away and destroyed, it is expedient that at least two copies be written, one of which is handed over to the heir himself, and the other to a notary. - When the testator has died, the designated heir must present the testament to the president of the tribunal of the domicile of the deceased, who will establish that the testament is to be deposited with such a notary, and that the goods left to him by the testator are to be handed over to the heir.

Of itself no obligation exists of making a testament; but accidentally, this obligation can be present, so that lawsuits may be avoided and restitution may be made more safely, if it is necessary. But upon priests who have received Mass stipends and monies for instituting good works, the duty is incumbent of writing a testament as soon as possible, so that they may prudently dispose of their goods, and take care lest the things of others, which have been deposited with them, be seized by natural heirs.

696. (B) A solemn testament is that which is received by two notaries before two witnesses, or by one notary before four witnesses. It is dictated by the testator, written by the notary, and signed by the notary, the witnesses, and the testator.

(C) A mystic testament is that by which the testator disposes secretly of his goods, and which he offers closed and sealed to a notary, before six witnesses, declaring that this is his testament written and signed by his own hand, or written out by another and signed by himself.[1]

[1] *Cod. civ.*, art. 968-980, in *Supplem.*, p. 114*.

697. 3. On the force in conscience of a testament lacking legal forms.[2] (A) If the matter concerns a testament or legacies pertaining to profane causes, the testament can be held as valid by the legatee until it is rescinded by the judge, according to what was said above, n. 618; but it is permitted to use no fraud for deceiving the judge, e.g., by supplying the designation of the day or year which was omitted, or by placing the name of the testator who died before he signed; and if he whom the testament favors has used fraud or another unjust means, he is bound to restitution toward the heirs who have the right of seeking rescission of the testament; for the public good demands that fraud be able to patronize no one.

[2] These principles also have force for donations.

But the natural heir can seek rescission of the testament, unless he explicitly promised the testator that he would not impugn the testament, and the testator, relying on this promise, abstained from changing the testament; for if he does not stand by the promise, by fraud he deprives the legatee of a

right which the latter could legitimately have obtained; for the testator would have used other means for transmitting these rights to the legatee.

698. (B) But if the question concerns a testament for pious causes, by which namely goods are left to churches, monasteries, the poor, or pious works erected for divine worship or the relief of the poor, in honor of God, it was controverted whether in the forum of conscience it would have force, even after the sentence of a judge annulling that testament.

(a) The more common opinion affirmed this; for testaments for pious causes, which regard a supernatural end, are subject to ecclesiastical laws, not civil laws, since the Church has the right of acquiring temporal goods independently of the State, for pursuing her end; therefore testaments lacking civil forms remain valid in the forum of conscience, as often as they are valid from the principles of Canon Law, that is, as often as there is moral certainty concerning the will of the testator, e.g., by the concordant testimony of two witnesses, or by the writing of the testator.

The decrees of Pontiffs and the responses of Congregations prove this. Thus Alexander III writes back to the judges of Velletri concerning testaments for pious causes:[1] "Because causes of this kind concerning the judgments of the Church must be treated not according to the laws, but according to the canons, and for these, divine Scripture testifying, two or three suitable witnesses suffice, we command your discretion by apostolic writings that, when some such cause shall have been brought to your examination, you treat it not according to the statutes of the decrees." - This law indeed has by no means fallen into desuetude, as is clear from more recent responses of the Roman Congregations; thus the unmarried Eudorius had instituted Boniface as universal legatee through a testament clothed with due forms; but he had handed over to Boniface a private writing (invalid before the civil law), in which he manifested a pious will. But Boniface, when Eudorius had died, kept the whole inheritance without fulfilling the pious legacy. Having been questioned on this matter, the Sacred Penitentiary responded on June 23, 1844:[1] "Boniface is bound in conscience to fulfill the will of Eudorius certainly known, for the forum of conscience."

[1] *Decretal. Greg.* IX, lib. III, tit. 26, cap. II, p. 541, ed. Friedberg.

[1] In *Acta S. Sedis*, II, p. 369.

699. (b) Nevertheless a few theologians, such as Daelman, d'Annibale, Haine,[2] taught that this obligation was doubtful, and therefore not to be urged.

[2] Daelman, *Tr. de Justitia*, p. II, *de Contractibus*, q. II, obs. 8; d'Annibale, III, n. 70; Haine, q. 53, p. 214-218.

For the rescript of Alexander III indeed has force for the Pontifical territory, but not for the universal Church; and although it was inserted in the Body of Law, and thus extended to the universal Church, it has become obsolete in many parts of the Church, so that today the Church does not urge her right. - But the response of the Sacred Penitentiary does not settle the matter; for Boniface in the case was bound to fulfill the will of Eudorius not indeed by force of the testament, but by force of an innominate contract by which he had obligated himself to fulfill the pious legacies, once he was instituted universal legatee by Eudorius.

700. Practical conclusions. The Code has practically imposed an end to the dispute by establishing these things: (a) "In last wills for the good of the Church, the solemnities of civil law are to be

observed, if this can be done; if these have been omitted, the heirs are to be admonished to fulfill the will of the testator." (b) "The wills of the faithful giving or leaving their faculties for pious causes... are to be fulfilled most diligently even as regards the manner of administration and expenditure of the goods..." (c) "Ordinaries are the executors of all pious wills both by reason of death and among the living... Clauses contrary to this right of Ordinaries, added to last wills, are to be held as not added." (*Codex*, 1513-1515).

But if pious legacies seem too onerous, heirs are easily admitted to composition with the Church; concerning this the Code, c. 1517, establishes the following: "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 shall have expressly granted this power also to the local Ordinary. But if the execution of the burdens imposed, on account 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 preserving, in the best way possible, the will of the founder, will be able to diminish the same burdens equitably, except for the reduction of Masses, which always belongs uniquely to the Apostolic See."

III. On the Rights and Burdens of Legatees.

701. 1. State of the question. A testator can dispose of his goods in various ways, by instituting heirs, or legatees, or executors of the testament, provided he clearly expresses the intention of giving his goods or part of them for the time following his death. - Formerly a distinction was made between heirs and legatees: the former represented the deceased by succeeding to his goods either as a whole or according to an allotted part; but legatees received certain goods from the heirs themselves. Today, however, in France and many other nations, this division is omitted; but universal legatees, legatees by universal title, particular legatees, and testamentary executors are distinguished; concerning these we shall say a few things.

702. 2. Prescriptions of French civil law.[1] (A) Heirs or universal legatees are called those to whom the universality of the goods of the deceased is given. The testator can choose one universal legatee, or several, according as he wishes. (a) As regards rights, a universal legatee, if there are no necessary heirs, immediately obtains the dominion of the goods of the deceased and *saisine*, as they say; if there are necessary heirs, these obtain *saisine*, and the legatee must ask from them the handing over of the goods. (b) His offices are these: if he alone receives the inheritance, he must pay all legacies and debts, even beyond the resources of the inheritance, unless he received the inheritance under benefit of inventory;[2] - but if he concurs with a necessary heir, he alone is bound to pay all legacies, but debts only proportionately to the part of the inheritance which he receives.

[1] *Cod. civ.*, art. 1002-1034; Planiol, III, n. 2730-2835.

[2] In the forum of conscience, more probably he is not held to pay debts beyond the resources of the inheritance, even if he did not use the benefit of inventory, at least before the sentence of the judge; for debts of this kind, as being real, are annexed to the inheritance itself, and therefore do not obligate the very person of the legatee beyond the resources of the inheritance. But, after the sentence of the judge, the law must be obeyed, which in itself is consonant with reason,

insofar as it tends to this: that juridically there can be certainty concerning the resources of the inheritance, and thus the rights of creditors may be preserved.

(B) Legatees by universal title are those to whom the testator gives an allotted part of his goods, e.g., a third or fourth part, or all movable or immovable things. (a) These do not have *saisine*, but must ask for the goods given to them from the natural or legal heirs, or from the universal legatees. (b) They must pay debts and particular legacies according to the proportionate part of the inheritance which they receive.

703. (C) Legatees by particular title are those to whom the testator gives a determinate thing. (a) They have a right to the goods legated to them immediately after the death of the testator; but generally they cannot enter into possession or demand fruits except from the day on which they sought the handing over of the goods, or this was voluntarily granted by the heirs. (b) They are not bound to pay the debts and burdens of the succession, unless the testator has explicitly declared this, or the goods given to them are burdened with mortgages.

(D) Testamentary executors are mandataries chosen by the testator himself, for the purpose that they may faithfully watch over the execution of the dispositions contained in the testament; their rights and offices depend both on the intention itself of the testator and on civil law.

IV. On the Cessation of a Testament.

A testament can cease in three ways: by revocation, caducity, and rescission.[1]

[1] The things which follow are admitted among most nations; cf. *Cod. civ. Gall.*, art. 1035-1047; Planiol, III, n. 2836-2870.

704. 1. By revocation; for a testament is revocable from its nature, since the will of man is ambulatory until death. If the testator under the faith of an oath has promised that he will not revoke the testament, he indeed sins against religion by revoking it without a legitimate reason; but not against justice, because an oath cannot change the nature of a testament, which is of itself revocable; accordingly, even in this case, the revocation would have force.

But a testament is revoked: (A) explicitly, by a new testament in which the old one is wholly abrogated or abrogated as regards some dispositions; or by an act before a notary, by which a change of will is declared.

(B) Implicitly: (a) by making a new testament, in which indeed nothing is said about the former one, but dispositions contrary to those which were contained in the old one are contained; (b) by alienation of the legated thing, although the alienation is null, or the testator afterward recovers the thing; for such alienation signifies a change of mind clearly enough; (c) by laceration, obliteration, or destruction of the testament, carried out by the testator himself, or by his order.

705. 2. By caducity, which is verified when dispositions valid from the beginning cannot obtain their effect because of a supervening impediment:

(a) if the legatee dies before the testator; for since testamentary donation is made in consideration of the person, it does not pass to the heirs; (b) if the legatee dies before the condition on which the

legacy depended is fulfilled; (c) if the legated thing has totally perished while the testator was living; or, after his death, without any fault of the heir: for then the thing perishes to the owner; (d) when the legatee renounces the legacy after the death of the testator; or becomes incapable of receiving it: this occurs in France only when he undergoes one of those penalties which formerly drew civil death after them.

706. 3. By rescission, which the heirs can seek for a threefold cause: (a) if the legatee does not execute the conditions imposed by the testator; (b) because of grave ingratitude of the legatee toward the testator; thus, in France, if he has plotted against the life of the testator, - has been guilty of cruelties, a delict, or grave injury against him, - or has brought grave injury upon his memory; (c) if there is some cause of nullity from lack of legal forms or from incapacity of the parties.

§ IV. On Those Things Which Are Common To Donation And Testaments.

We shall speak: 1. on incapacity for giving or receiving; 2. on certain modes of giving prohibited by law; 3. on the limitation of the faculty of giving through legal reservation.

I. On Incapacity For Giving Or Receiving.

707. By natural law, all those are capable of giving and receiving who are suited for contracting, according to the things said above, n. 651. - But by civil law, which is diverse among various nations, the capacity of giving or receiving is restricted, on account of the public good.

1. On Incapacity For Giving From French Law.[1]

[1] *Cod. civ.*, art. 903-907, in *Supplem.*, p. 106*; Planiol, III, n. 2888-2908.

708. (A) Minors, even emancipated ones, cannot give except in the cases determined by law; namely (a) after the sixteenth year of age, they can give by testament half the goods which they would be able to give if they were of majority age; (b) when they contract marriage, they can give by the contract of marriage whatever persons of majority age can give. - Moreover small manual donations do not fall under the prohibition of the law.

(B) Wives cannot give among the living without the consent of the husband or the authority of the judge; but by testament they can dispose of their goods: for the testament will not have force except at the time when the authority of the husband will already have ceased.

(C) The insane and the interdicted can in no way give; but those to whom a judicial council has been given cannot alienate goods among the living without the assistance of this council, but they can make a testament.

709. (D) Cessionaries of goods (in French, *faillis*) cannot give within the ten days which precede the judicial declaration of cessation of payments; and donations made before can be annulled if it is proved that they were fraudulent.

(E) Those condemned to perpetual penalties can in no way give, unless the State dispenses from this incapacity; indeed a testament validly made by them before is annulled by that very fact.

(F) Nuns living in a civilly approved institute cannot give to the community or to one of its members beyond a fourth part of their goods, unless the donee or legatee is an heir in the direct line of the donor; yet this restriction does not touch donations which do not exceed ten thousand francs.[1] Moreover attend to those things which must be said concerning interposed persons below, n. 712.

[1] Law of May 24, 1825, in Riviere, *Lois usuelles*, p. 221.

2. On Incapacity For Receiving.[2]

[2] *Cod. civ.*, art. 908-911, in *Supplem.*, p. 106*; Planiol, III, n. 2209.

710. Some are absolutely incapable, that is, with respect to any person; but others are relatively incapable, namely with respect to such and such a person.

(A) Absolutely incapable are: (a) infants not yet conceived at the time when the testator dies; but he is judged to have been conceived at the opportune time who is born within three hundred days after the death of the testator, provided he is brought forth viable.

(b) Those condemned to perpetual penalties, who can receive nothing except an alimentary pension.

(c) Societies, or associations which are not legally recognized: nevertheless the individual members can receive donations, just like the other citizens, with attention however to those things which we shall say concerning interposition, n. 712.

(d) Legally recognized institutes, such as seminaries, congregations, hospitals, etc., can receive nothing without the approval of the State, namely of the Prefect if the thing given does not exceed 300 francs, and of the Government if it exceeds this sum.[3] Yet this restriction is not extended to manual donations.

[3] Nevertheless, when the matter concerns church Fabrics, the Prefect can approve donations and legacies which do not exceed 1000 francs. - P. Caulet discusses at length and accurately the civil capacity of ecclesiastical institutes, *L'Avocat du Clerge*, Paris, 1897, p. 689-748.

(e) Wives cannot accept without the consent of the husband or the authority of the judge; emancipated minors without the assistance of a curator; but minors not yet emancipated can receive nothing of themselves; but their parents or tutors, in their name, can accept donations; the interdicted cannot receive without the consent of the tutor and the council of the family.

711. (B) Relatively incapable are: (a) a tutor in relation to a minor, until the latter has attained majority and the accounts of guardianship have been rendered to him; namely lest the tutor abuse his authority to the detriment of the ward. - Yet if the tutor is one of the ward's ascendants, he can receive something from him.

(b) Physicians, surgeons, pharmacists, and ministers of worship, even non-Catholics, who have furnished the work of their art or ministry to some sick person in his last illness, can receive nothing from him by gratuitous title, through a donation, even testamentary, made during that illness, unless they are direct heirs, - or, if direct heirs are lacking, collateral relatives at least in the fourth degree. The reason is that all these, in circumstances of this kind, can exercise too much dominion over the mind of the sick person.

They are not incapable: a physician who is called only for the sake of counsel (*en consultation*); a pharmacist who sold medicines without furnishing his work; nor a minister of worship who only furnished extreme unction or sacred communion, or visited the sick person as a friend.

(c) Illegitimate children, legally acknowledged by the parents, receive only a smaller part of the inheritance than legitimate children, as will be said where we treat of successions; if they have not been legally acknowledged, they are held as strangers. - Incestuous and adulterine children, when they are legally demonstrated as such (which rarely happens, because the law does not permit them to be legally acknowledged by the parents), can receive only an alimentary pension.

II. On Certain Modes Of Giving Prohibited By Law.

712. So that the incapable may be more effectively prohibited from giving or receiving, French civil law forbids donations to be made to an incapable person through interposition or substitution, or that an illicit condition be attached to them.

1. Forbidden interposition is present when a donation is made to a capable person, under the law that he hand over the thing to a person who is legally incapable of receiving; for then the donation is made in fraud of the law. - Now generally interposition must be proved by him who impugns the validity of the donation, by showing that a pact, either express or tacit, was entered into between the donor and the donee, by force of which the latter truly obligated himself to hand the thing over to the incapable person, - or that the donor ordered that the thing be given to the incapable person. - But it is not sufficient that he expressed a desire, since such a desire does not induce an obligation.

Nevertheless there are certain persons who are legally presumed to be interposed, namely the father and mother, descendants, and spouse of the incapable person;[1] this presumption indeed is *juris et de jure*, so that proof to the contrary is not admitted. - From the recent law of July 1, 1901, members of Congregations, or of civil societies which possess the goods of congregations, are held as interposed persons, as can be seen in the *Supplem.* for France, p. 45; yet in this case proof to the contrary is admitted.

[1] *Cod. civ.*, art. 911, in *Supplem.*, p. 107*; Planiol, III, n. 2988.

713. 2. Substitution in general is a disposition by which the donor designates a twofold person: one who is immediately to receive the gift or legacy, and another who, in default of the former or after the former, will receive the same goods.

It can be twofold: direct or vulgar, and fideicommissary.

(A) The former consists in designating a person who will obtain the gift or legacy if the donee or legatee does not wish or is not able to obtain it; e.g., I give such a house to John, and, in his default, to James. This substitution is nothing other than a conditioned donation, and it is valid, even in French law, from art. 898, in *Supplem.*, p. 105*.

(B) The latter, or fideicommissary substitution, insofar as it is prohibited by the Code (art. 896), is a disposition by which the donor of some thing hands over dominion to another, with the burden of preserving the donated thing until death, and transmitting it after death to a third person. Whence

he who receives the thing with the burden of transmitting it is called burdened (*le greve*) or fiduciary, while he to whom the thing is transferred is called the fideicommissary or the called one (*l'appele*, *le substitue*).

714. This kind of substitution, before the French Revolution, was in use among the nobles and the rich, so that the goods of a family might be securely transmitted to descendants, and thus the splendor of these families might be preserved in perpetuity. But the civil Code prohibited it as harmful to the equality of citizens, to the free transfer of goods, and to agriculture; and indeed so strictly that not only the substitution, but the donation itself is annulled; whence the fiduciary can neither retain the donated goods for himself nor hand them over to another, but the natural heirs can vindicate them. This law, as greatly restricting the natural liberty of disposing of one's own goods, more probably does not oblige in conscience except after the sentence of the judge.

Nevertheless, lest spendthrifts dissipate goods legated to them, a twofold substitution is permitted by the civil Code: (a) a father and mother can give to one or several of their children goods of which they have free disposition, with the burden of rendering them to all children born or to be born from them, without any distinction, only in the first degree; (b) those who have no descendants can likewise leave goods of which they can freely dispose to brothers or sisters, with the burden of rendering them to all children born or to be born from them, only in the first degree (art. 1048-1074, in *Supplem.*, p. 120*).

715. 3. On illicit conditions attached to a donation or testament. Conditions of this kind, from art. 900 (*Supplem.*, p. 105*), do not render the donation invalid, but are held as not written, so that the donee is in no way bound to fulfill them. - Nevertheless, from jurisprudence, a donation is held as invalid if the illicit condition truly gave cause to the contract; for then the consent was bound to the condition itself.[1]

[1] A fuller exposition of this matter can be seen in Planiol, III, n. 3026-3045.

III. On The Limitation Of The Faculty Of Giving Through Hereditary Reservation.

716. 1. State of the question. By natural law, each one can freely dispose of his goods, unless he has natural heirs for whom he is bound to provide. For parents are bound to give to children who cannot procure the necessities of life for themselves food, clothing, and other necessities, and at the same time to educate them in such a way that they can acquire the means of honorable support. Children likewise must grant an alimentary pension to parents who are now incapable of providing for their own necessities, as will be explained below in the treatise on the obligations of various states.

[2] Boissonnade, *Histoire de la reserve hereditaire*, Paris, 1873; Glasson, *L'autorite paternelle et le droit de succession des enfants*, in the periodical *Reforme sociale*, 1889, t. II, p. 209; Albert, *La liberte de tester*, Paris, 1895.

But in many regions, civil law proceeds further, and defines what allotted part of the inheritance is disposable, and what allotted part is to be reserved to natural heirs. Whence the disposable part is that concerning which the owner can dispose gratuitously at will; the reserved part, or legitimate

part, is said to be that which is devolved to the natural heirs by the law itself, according to the proportion defined by law; therefore the owner cannot dispose of it gratuitously, but only by onerous title.

Now in England and the United States of America full liberty of making a testament is in force; in certain other regions, e.g., in Italy and Germany, half the goods is disposable, and the other half is reserved; in Spain, a third part of the goods is disposable, - a third part is to be distributed equally among the children, - and the last part can be given freely to any of the children, but not to strangers.[1]

[1] On these, see Albert, *La liberte de tester*, p. 571-651; cf. Brocher, *Etude sur la legitime et les reserves*, Paris, 1868; Cunot, *Des droits de legitime et de reserve*, Paris, 1877.

717. 2. On reservation in France.[2] (A) The extension of reservation: (a) When legitimate descendants survive, the disposable part depends on the number of children: if there is one child, the parents can freely dispose of half the goods; if two children survive, they can dispose of a third part; if three or more, a fourth part is disposable. - By the name of children are understood also grandchildren (*petits-fils*) and their descendants, yet in this sense, that all posterity arising from one child are counted only as one; thus if Peter had two sons, John and James, and the former died leaving five children after him, these five represent the one John and are held as one in relation to the reserved part.

[2] *Cod. civ.*, art. 913-930, in *Supplem.*, p. 107*; Planiol, III, n. 3047-3140.

But if natural children legally acknowledged survive, an allotted part must be reserved to them, yet a smaller one than if they were legitimate.[3]

[3] Since the matter is very complex, see recent jurists, e.g., Planiol, n. 3070-3074.

(b) If ascendants survive, descendants being lacking, and indeed in each line, paternal and maternal, half the goods is reserved; but if in one line, a fourth part is reserved.

(c) There is no reservation in favor of collaterals; nevertheless, in practice, if collaterals, otherwise poor, complain that legacies have been made to public or private institutes, to their detriment, public authority is accustomed to reduce these legacies. And rightly so indeed; for charity demands that certain goods be left to relatives, especially brothers or sisters, who are in common necessity.

(d) To the surviving spouse is not granted a reservation properly so called, but a right to the usufruct of a certain part of the goods of the deceased spouse, as will be said below where we treat of successions, n. 729.

718. (B) On the reduction of donations. When donations among the living or testamentary donations exceed the disposable part, they are not absolutely void, but can be reduced, if the reserving heirs or their successors or those having cause from them demand this; first indeed testamentary dispositions are reduced, according to the proportionate part of value; then, if legacies do not suffice for paying the reserved part, donations are reduced, not indeed according to a proportionate part, but in chronological order, beginning from the most recent and ascending backward to the first, if there is need.

N. B. Some say that any donations expended from mere revenues which had not yet been joined to capital are excluded from the law of reservation; but this is by no means admitted by jurisprudence, excepting those things which are not properly gifts, but only presents or alms.[1]

[1] Planiol, III, n. 3088, alleging Cass. Jan. 11, 1882; cf. M. Henry, *Du legs de la quotite disponible*, Paris, 1902.

719. 3. On the social utility of reservation and of the disposable part. With great heat this matter is disputed among jurists and economists, and also among philosophers and theologians, some defending full liberty of making a testament, while others defend legal reservation; we shall briefly weigh the arguments of each school, drawing certain conclusions therefrom.

(A) Full liberty of making a testament, or at least the faculty for parents of disposing of half the goods, whatever the number of children may be, is defended by Le Play and the school of Social Economy founded by him, Baudrillart, P. Leroy-Beaulieu, d'Espinay, Pinard, Cl. Jannet, and many other economists,[2] with whom certain theologians agree; they defend this opinion by arguments from both the economic and the moral order.

[2] Le Play, *La reforme sociale*, Tours, 1887; id., *Organisation du travail*, 1888; Baudrillart, *Les lois de succession en France*, in *Rev. des Deux-Mondes*, April 15, 1872, p. 851; P. Leroy-Beaulieu, in the periodical *L'Economiste francais*, March 1880; d'Espinay, *La liberte de tester et la copropriete familiale*, Angers, 1882; Pinard, *Les reformes possibles en matiere successorale*, in the periodical *La reforme sociale*, Aug. 1, 1886, p. 127; Cl. Jannet, *Le Socialisme d'Etat*, Paris, 1890, p. 491-538; L. Brun, *Introd. a l'Etude du droit*, Paris, 1887, p. 207-234; - Albert lists others, op. cit., p. 715-727.

720. (a) Legal reservation, as it exists in France, induces the dismemberment of inheritances, with great detriment to families and to society itself; for since, where many children are present, the reserved part is the principal one, and must be divided equally among all the children, great possessions cannot long be preserved in the same family, unless the number of posterity is voluntarily limited; moreover, since from jurisprudence each of the children has a right to a portion not only of the same price, but also of the same nature, estates generally must be so divided that their cultivation becomes altogether difficult, while industrial or commercial institutes, since they cannot be divided, are often sold at a lower price and pass into alien hands, so that the children must begin another business; this indeed harms the progress of commerce or industry not a little. - Moreover, when the matter especially concerns small inheritances, the expenses which arise from succession are so onerous that they almost equal the very price of the inheritance; and thus children, especially minors, are reduced to extreme poverty at the time when they are deprived of their father.[1]

[1] You have examples in Le Play, *Reforme sociale*, t. I, p. 265; Albert, p. 683-686. - "From 1879 to 1883... the average of costs per hundred francs of price had been 146 fr. 72 in sales with a maximum product of 500 fr., 57 fr. 13 in those whose price varied from 501 to 1000 fr., and 31 fr. 10 in the sales of immovables adjudicated for 1000 to 2000 fr." (*Rapport du Garde des sceaux*, in *Officiel*, Saturday, May 6, 1893, p. 2300.) Cf. *Enquete sur l'etat des familles et l'application des lois de succession*, by the Society of Social Economy, Paris.

721. (b) The effects in the moral order are worse: 1. voluntary sterility of spouses; there is no other nation in Europe in which the number of those born is so small as in France; but the chief cause of so great an evil must be taken from the equal and forced partition of inheritances; for parents fear lest, if they have begotten many children, the dominions possessed by them be

divided into little parts, and posterity be reduced to a mediocre or lowest state of fortune; and therefore they use means, generally illegitimate, for limiting the procreation of offspring; this is established both from open declarations of fathers of families, - and from the fact that among the poor and workers, who lack possessions, offspring is more numerous, - and from comparison of France with other regions where liberty of making a testament is fuller.[2]

[2] Cf. Albert, op. cit., p. 657-667; Cheysson, *Discours sur la depopulation de la France*, in the periodical *Reforme sociale*, June 1, 1898, p. 858; Baugas, *L'affaiblissement de la natalite en France*, in *Revue Cath. des Inst. et du Droit*, Jan. 1895, p. 54; A. des Cilleuls, *Les lois successorales et la population*; id., *La population*, Paris, 1902, p. 124-127. To the matter, Leroy-Beaulieu, *L'Economiste francais*, March 1880: "They wished to prevent the bourgeois, like the peasant, from doing what was formerly called making an elder, that is, favoring one of the children; they have succeeded only in part. One can always make an elder by suppressing the younger children: it is to this fine result that a crowd of French families apply their ingenuity." - Cf. de Nadaillac, *Un cri d'alarme*, in *Le Correspondant*, April 25, 1894, p. 250-264.

2. Marriages on account of money, and not on account of mutual love, are often entered; indeed from this necessity of partitioning the inheritance there has grown up the custom of providing daughters with dowries, so that they may more easily marry; for since the possessions of parents are divided equally, compensation is sought in the marriage contract, insofar namely as young men seek to marry a richer girl, so that the part of the goods which must be left to brothers may be supplied through the dowry of the spouse; and thus it not rarely happens that the goods of the betrothed woman rather than her moral endowments are sought after; from this arise quarrels and divorces.

3. The authority of parents is likewise diminished by this; for since children of families securely expect a fat inheritance, they often become improvident, lazy, luxurious; besides, parents lack sufficient authority for breaking their obstinacy and inciting them to labor strenuously, because they are unable to disinherit them. Hence reverence or obedience toward parents decreases day by day; indeed sometimes children desire the death of their parents, so that they may more quickly and freely enjoy the paternal inheritance. But on the other hand, where posterity is not able to expect so securely the goods of ascendants, they are incited to labor strenuously so that they may provide for themselves, - not rarely they pass over to foreign nations so that they may increase their resources, - and they pursue their parents with due honor, so that they may be able to obtain part of the goods.

722. (B) On the other hand, many jurists approve legal reservation as it lies in the Civil Code:[1] -

[1] Thus, among others, Batbie, H. Ameline, Wolowski, whose arguments can be read in the little work *La liberte de tester, discussion sur le regime des successions*, Paris, 1892; Boissonnade, op. cit.; Cornulier-Luciniere, *Etudes sur le droit de tester*, 7th ed., Orleans, 1880.

(a) For it more favors the equality of citizens, and more effectively prevents envies and dissensions, which would be more frequent among brothers if parents were permitted to disinherit one, and to heap gifts upon another. For parents do not always favor sons who are endowed with greater industry or virtue, but rather those who strive to capture benevolence by flattery and blandishments.

(b) Besides, it is of the greatest importance to increase the number of those possessing certain goods; those who have nothing of their own easily slip into socialism, while possessors of lands, even of small value, strenuously defend the right of property; wherefore, among farmers, there are very few

who adhere to collectivism, while workers who live in cities and have nothing as their own generally eagerly embrace the theories of the socialists.

723. (c) Moreover, when lands are divided among many, they are cultivated with greater care and industry, and thus are made more fruitful, as experience establishes; for in France, where this partition is in force, fields are cultivated more diligently and fruitfully than in England, where very vast estates have been preserved in the same family for a long time. - Nor should it be said that on small inheritances the use of machines is impossible, and thus greater expenses are incurred; for today associations of farmers (*syndicats agricoles*) are easily formed, by whose help machines and instruments can be procured for cultivating fields without great expenses.[2]

[2] A. de Foville learnedly shows that the division of lands among many is very useful, *Le Morcellement*, Paris, 1885.

(d) But the voluntary sterility of spouses must not be attributed solely, nor chiefly, to civil law, since in Belgium and other regions, where the same prescriptions are in force, numerous offspring are begotten, - but to unbridled luxury, love of pleasures, and an effeminate education which too often prevails among the rich. Wherefore the law concerning the partition of goods would be changed in vain, unless first morals were reformed and boys were instructed by a more manly discipline.

724. (C) Practical conclusions. (a) We indeed think that liberty of making a testament is restricted more than is just in France, since in reality it is less than in many other regions; but it is by no means established that the civil law in this matter is altogether unjust, as some contend: for the evils which are said to follow from it must not be imputed solely, nor perhaps chiefly, to it, but to other causes. Therefore the French law should be so tempered that, in every case, parents may be able to dispose of half the goods, - and more easily divide their wealth among the children while they are living, without being compelled to give goods of the same nature to each one, - and that inheritances devolved to minors may be divided among them according to equity without so many and such great expenses.[1] - But meanwhile, by a manly education let the inclinations of children toward luxury and pleasures be weakened and corrected.

[1] Cl. Jannet sets these things forth at length, loc. cit. - The Spanish system (above, n. 716) is more pleasing to others, and in reality seems altogether consonant with equity, insofar as it happily reconciles the rights of parents and of children; on this see Glasson, l. c.

725. (b) In certain parts of France, especially in the southern region, the usage has prevailed of giving more to one of the children, especially the firstborn, than the law itself permits, so that in this way better provision may be made for the preservation and decorum of families.[2] Those who act thus in good faith are not to be disturbed, provided the things which suffice for honorable support are furnished to the other children; for the French law, as restricting the natural rights of parents, does not bind strictly in conscience except after the sentence of the judge. This indeed is more evident when parents have acquired the greater part of their goods by their own labor.

[2] A. de Brandt, *Droits et coutumes des populations rurales de la France en matiere successorale*, translated from German by E. Regnier, Paris, 1901.

Besides, heirs who think that they have been injured have the right in conscience to have recourse to the tribunal, and all must acquiesce in the sentence of the judge.

But if parents, because of prejudices or hatred, deprived one or some of the children of the legitimate part, they would certainly sin against charity; yet more probably not against justice, before the sentence of the judge, provided they have left to them the things required for honorable support according to their state; this is especially true when testators by their own industry have greatly increased the family good: for then they can dispose of it more freely.

§ V. On Successions.

726. When someone does not dispose integrally of his things by donation or testament, the goods which remain pass to the heirs through legal succession. Legal succession therefore is the transmission of the goods of the deceased to one or several persons, according to the order defined by law. The general principles concerning successions are substantially the same among various nations, with a few exceptions, however, concerning the order to be followed among collaterals and ascendants, descendants being lacking. - Here, according to French law, we set forth: 1. who are the legal successors; 2. whether an option is given to them of accepting or repudiating the inheritance; 3. how the partition among the various successors is to be made.

[1] Carriere, *de Justitia*, II, n. 501-570; Marres, lib. I, n. 256-293; Planiol, III, n. 1698-2495.

I. Who Are Called To Succession From French Law?

727. 1. Certain persons are excluded from the inheritance:[2]

[2] *Cod. civ.*, art. 725-730, in *Supplem.*, p. 123*; Planiol, II, n. 1705-1759.

(A) By reason of incapacity: (a) those not yet conceived (n. 710); (b) those who, being born, are not capable of life (*non viables*); (c) those who, at the time when the succession begins, are already dead. - All these are excluded by the fact itself.

(B) By reason of indignity: (a) those who were condemned because of the murder of the deceased committed or attempted; (b) those who brought against the deceased a calumnious capital accusation, which has been judicially declared as such; (c) persons of majority age who did not denounce to the judges the murder of the deceased known to them, unless however they are excused from denunciation as relatives or connections by marriage of the murderer. - These, however, are disinherited not by the fact itself, but after the sentence of the judge.

728. 2. On the order of succession.[1] Heirs are of a twofold kind: regular, who by the fact itself succeed to the person of the deceased, and immediately acquire all his rights, provided they take upon themselves the burdens of the succession; irregular, who are put into possession of the goods by the judge.

[1] *Cod. civ.*, art. 731-773, *Supplem.*, p. 124*; Planiol, III, n. 1780-1925.

(A) There are five orders of regular heirs; nor is there a transition from one order to another unless the heirs of the prior order are altogether lacking. - Now the following are called to succession: (a)

descendants of the deceased, namely legitimate or legitimated children, or recognized natural children, or adoptive children; then grandchildren (*petits-fils*), etc.

Legitimate children divide the inheritance equally among themselves. If one of them has died, his posterity divide among themselves the portion which would have fallen to the father. - Recognized illegitimate children obtain only a part of the inheritance determined by law (art. 756-761), if legitimate descendants, or ascendants, or brothers or sisters or their children survive; otherwise, they obtain the whole inheritance.

(b) Descendants being lacking, the father and mother of the deceased are called together with his brothers and sisters or their children, according to the proportion determined by law (art. 746-752).

(c) But if descendants and parents of the deceased are lacking, brothers and sisters divide the whole inheritance among themselves in the manner defined by the Code (art. 752).

(d) If descendants, brothers and sisters, and also parents of the deceased are lacking, the succession is devolved to ascendants: the nearer paternal ascendants divide half the part among themselves; but the nearer maternal ascendants divide the other among themselves (art. 746-749). - But if one of the two lines of ascendants has been extinguished, half the part is divided among ascendants, but the other among collaterals of the other line.

(e) If descendants, brothers and sisters, and ascendants are lacking, the inheritance passes to the children of brothers or sisters up to the twelfth degree (art. 750-755), and to other collaterals up to the sixth.

729. (B) There are two irregular successors: (a) the surviving spouse who, the aforesaid heirs being lacking, obtains the whole inheritance, provided he or she has not been judicially separated from the other spouse. - Moreover, when the surviving spouse does not obtain the whole inheritance of the other, and is not judicially separated, he or she acquires the usufruct of a certain portion of the goods of the deceased, according to art. 767; (b) the State, or fisc, which, in default of other heirs, obtains all the goods (art. 768).

II. On Acceptance Or Repudiation Of A Succession.

730. 1. On the option given to heirs. Heirs can accept a succession either simply or under benefit of inventory, or repudiate it. It is indeed expedient to accept simply when there is moral certainty that the succession is not burdened by obligations beyond the resources of the inheritance: for thus many expenses are avoided. - But if the matter is doubtful, it is better to accept under benefit of inventory, because, although the expenses are greater, the heir nevertheless is not held to pay debts beyond the resources of the inheritance. - But it is useful to repudiate a succession when there is moral certainty that the inheritance is burdened by obligations which exceed the wealth, or when a donation of very great value, made previously, could be lost or diminished by the obligation of bringing it back to the common mass, as will be said below.

[1] *Cod. civ.*, art. 774-810, *Supplem.*, p. 129*; Planiol, III, n. 1953-2034.

731. 2. On the rights and obligations of one accepting. (A) He who accepts simply, whether explicitly, by assuming the name of heir in an authentic or private act, yet in such a way that it is clearly established that he has accepted the succession, - or implicitly, by eliciting an act which necessarily carries with it the will of accepting: (a) immediately acquires all the rights of the deceased and can dispose of them; (b) likewise takes upon himself all burdens, even beyond the resources of the inheritance, so that he is bound to pay debts not only from the goods of the succession, but also from his own.[2] - This obligation is irrevocable, according to that saying, "once an heir, always an heir," unless however in cases excepted by law, namely when acceptance was obtained through fraud, - or when the inheritance is diminished by more than half, because of the finding of a testament unknown at the time of acceptance (art. 783).

[2] Thus indeed from civil law, but not from natural law. - But civil law in this case does not oblige in conscience before the sentence of the judge, as was said above (n. 618-619), because it rests on a false presumption of fraud, which does not exist in the case; for we suppose that the heir acted honestly, and did not withdraw any goods of the succession.

732. (B) He who accepts under benefit of inventory must expressly declare this and have this declaration inscribed in the registry of the tribunal, "*au greffe du tribunal de premiere instance dans l'arrondissement duquel la succession s'est ouverte*" (art. 793); then: (a) he receives only administration of the goods, until the matters have been put in a clear state, and satisfaction has been made for the burdens; (b) he must take care that an inventory is completed; (c) this having been posited, he is not held to pay burdens beyond the resources of the inheritance, but can free himself from every obligation by leaving all the goods to the creditors and legatees; indeed he has the right of demanding payment of all things which are owed to him by the succession.

733. 3. On repudiation of succession. Since no one is an heir unless willing, someone can renounce a succession. But this renunciation is not presumed, but must be declared expressly in the same manner as acceptance under benefit of inventory. Now one renouncing (a) is judged never to have been an heir, and accordingly his portion accrues to co-heirs of the same order, or, if these are lacking, is devolved to the subsequent degree; (b) is freed from paying debts, but creditors who have been injured by this renunciation can obtain from the judge that they accept the succession in his place; in which case, the renunciation is invalidated only in favor of the creditors, and indeed for this end alone, that those things which are owed to them may be paid (art. 788); (c) can retain gifts and legacies made to him, provided they do not exceed the disposable part.

III. On The Partition Of The Inheritance.

734. 1. State of the question. Sometimes, to forestall lawsuits, the partition of the inheritance is made by the ascendants themselves while they are living; then it must be made in the form of donation, or of testament (art. 1075-1080), while observing the rules concerning reservation and concerning succession. - If no partition has been made while the parents are living, after their death it must be instituted, unless the co-heirs agree about deferring it for some time, which must not exceed five years; after this time has

elapsed, the agreement can be renewed; - but if there is no pact of this kind, no co-heir can be compelled to remain in indivision.

[1] *Cod. civ.*, art. 815-892, *Supplem.*, p. 133*; Planiol, III, n. 2170-2442.

735. 2. On collation (*rapport*) to be made before partition. So that relative equality may be preserved among the heirs, each must bring back to the common mass whatever he received from the deceased through donation, unless however the donor explicitly said that the things given, which otherwise do not exceed the disposable part, are not to be brought back, - or the law itself disposed otherwise.

Now the law exempts from collation: (a) expenses of education, namely those which are necessary for learning an art or commerce, or nuptial expenses, or customary gifts; but not expenses made for procuring some office or state of life (*frais d'etablissement*); (b) fruits and interest of the donated thing, which were received before the death of the donor; (c) immovable things which perished without the fault of the donee. - Testamentary legacies are exempt from collation unless the testator has disposed otherwise, or unless they exceed the disposable part.

736. 3. On rescission of partition. Partition once made can be rescinded (a) because of force and fraud; (b) when one party is injured, and this injury exceeds a fourth part of the portion which ought to have been attributed to him. - Moreover in the forum of conscience, any unjust injury whatever must be repaired.

737. 4. On the assurance of partition (*garantie des lots*). To preserve equality, it has been established that, if one of the heirs suffers eviction, totally or partially, of the goods which had fallen to him, or is disturbed in their enjoyment, the other heirs are bound to render him unharmed, provided: (a) the cause of eviction was prior to the partition, and not to be attributed to the fault of the heir whose interest is involved; (b) this eviction was not exempted from assurance by an explicit clause.

738. 5. On the proportion to be preserved in the payment of debts. The general principle, consonant with natural and civil law (art. 870), is that each heir must concur in the payment of debts, proportion being had to those things which he has received from the inheritance. Nevertheless, when one of the heirs has received some estate subject to mortgage, the creditors can compel him to pay the whole debt by which the estate is burdened; but he has recourse against the other heirs for recovering the part owed by them (art. 874).

Art. II. On Onerous Contracts Of Certain Outcome.

739. After the things said concerning gratuitous contracts and acts, we approach onerous contracts, and indeed those of certain outcome, intending afterward to discuss aleatory contracts. Now among onerous contracts of certain outcome the following stand out: purchase-sale, by which the dominion of a thing is transferred for a price; lease, by which the use of a thing is granted for payment; contract of labor, by which work to be furnished is promised for wages; loan for consumption, by force of which gain is received from money which is granted to another for

use of consumption; contract of partnership, by which several agree concerning some thing to be placed in common for making profit therefrom and dividing it proportionately among themselves. Concerning these we shall speak separately.

§ I. On Purchase-Sale.

740. Preliminary notes. 1. As was noted above (n. 611), contracts draw their origin from the very social nature of men; for since, given the division of labor, they produce certain things which they do not need, and besides need many things which they do not produce, exchanges of goods are made among them from this, insofar as they hand over certain goods to others and receive from them other goods of a different kind. But afterward, since it often happened that things to be exchanged were of unequal value, gradually by the usage and consent of nations a common measure of things was chosen, namely money,[2] by which exchanges were made easier and more frequent; but that kind of exchange which is made through money was called purchase-sale.

[1] St. Thomas, 2. 2., q. 77; Lugo, disp. XXVI; Salmant., tr. XIV, cap. II; Billuart, diss. III; St. Alphonsus, n. 793-830; Carriere, II, n. 655-765; Ball. P., n. 747-820; Berardi, n. 597-668; Lehmk., n. 1109-1123; Noldin, n. 577-596.

[2] Money (*pecunia*) etymologically draws its origin from the word *pecus*, because formerly it designated all wealth or riches, which in primitive times consisted chiefly in flocks; hence when coins were employed as the price of exchange, they were called *pecunia*, and among certain nations coins were marked with the head of a beast (*pecus*) (Breal and Bailly, *Diction. etymologique latin*, Paris, 1898, p. 254).

741. 2. Now purchase-sale is an onerous contract by which the dominion of some thing is transferred for a determined price. - Hence three things are required for the essence of this contract: (a) mutual consent of one who buys and another who sells; (b) some thing, whether movable or immovable, which is called merchandise; and thus sale is distinguished from exchange of money, in which some kind of money is exchanged for another kind of money; (c) money as the price of the payment; and thus purchase is separated from simple exchange, in which merchandise is given for merchandise.

742. 3. By natural law, the transfer of dominion is made by the consent alone of the contracting parties, namely as soon as they have expressed mutual consent concerning the merchandise and the price. But by civil law, among some nations, certain conditions are required so that the contract may be perfect; concerning these the Codes should be consulted.

In France,[1] dominion is transferred by the consent alone of the contracting parties. - Nevertheless, in certain cases, the sale is not perfect, because it is subject to some condition. Thus (a) when things are sold according to weight, number, or measure, the sale is not perfected unless they have been weighed, numbered, or measured; (b) when the matter concerns things which are customarily tasted before they are bought, such as wine and oil, the sale is not absolute until the buyer has tasted and approved them; (c) if the sale is made on trial (*a l'essai*), it is not judged perfect unless the thing has been tested. - In these or similar cases, as long as the sale is not perfect and absolute, the thing perishes to the seller; but as soon as the contract has been completed, the thing, even not yet handed over, perishes to the buyer.

[1] *Cod. civ.*, art. 1583-1593, *Supplem.*, p. 143*; Planiol, II, n. 1354-1365.

We shall speak: 1. on the just price which the seller can demand and the buyer must pay; 2. on the offices of the seller; 3. on the offices of the buyer; 4. on certain species of sale, in which special difficulties occur.

I. On Just Price.

743. 1. State of the question. (A) Price is the value of a thing expressed in money. But whence the value of a thing depends is greatly disputed among economists. Some say that this is to be taken from the very intrinsic utility of the thing, with attention at the same time to the abundance or scarcity of the thing; thus water, which is very useful, is generally esteemed lightly, because it abounds much, but where it is lacking, it becomes of the greatest price. Others hold that the value of a thing is to be derived from the labor consumed in making it. Finally others, to whom we assent, think that value depends on both these causes at once, and moreover on the more or less vehement desire which the buyer conceives of acquiring the thing, on account of the utility or pleasure which it brings to him.[1]

[2] Cavallera, *Semaine sociale* 1921, p. 57-70.

[1] P. Leroy-Beaulieu, *Tr. d'Econom. pol.*, III, p. 15-94; J. Rambaud, *Elements d'Econ. Politique*, p. 31-42; Ch. Gide, *Princ. d'Econ. polit.*, p. 51-70; V. Brandts, *Les grandes lignes de l'Econ. Polit.*, Louvain, 1904, t. II, p. 4-25.

Prices today are regulated chiefly by the law of competition, by force of which sellers of the same merchandise are content with small profit, so that they may win for themselves a greater number of buyers; and also by the proportion between things offered and things sought (*la loi de l'offre et de la demande*, supply and demand), in the sense that, other things being equal, merchandise is dearer in proportion as, on the one hand, it is offered less abundantly, and on the other, buyers who wish to acquire it are more numerous.[2]

[2] "It is formulated thus: the value of things (riches or acts) is in inverse ratio to supply and in direct ratio to demand" (J. Rambaud, op. cit., p. 257). - On the utility and disadvantages of competition, see Rambaud, p. 80-83; Gide, op. cit., p. 153-157.

744. (B) That price is called just which is judged morally to equal the value of the merchandise. But the equality about which we are treating here cannot be mathematical and absolute, but only moral and relative, insofar namely as each contracting party derives from the sale some utility, which, all circumstances being considered, seems to compensate that which he hands over to the other. - Now a threefold price is distinguished: legal, common, and conventional.

(a) Legal price is called that which has been defined by public authority; thus, in certain cities, by the authority of magistrates there is determined the price of bread or meat, or the price to be paid for the use of carriages. When a legal price is present, this must be stood by in conscience, unless it is manifestly unjust (which scarcely ever occurs), or has fallen into desuetude; for it was established by legitimate and competent authority, on account of the common good; therefore he who, without a reason altogether special and consonant with equity, exceeds that price, commits injustice either toward buyers, or also (at least frequently) toward other sellers, and is held to restitution.

745. (b) Common price is that which is determined by the common estimation of men, according to the variety of places and times. This indeed is not determined mathematically, but has a certain latitude, and can be threefold: highest, namely that above which honest merchants are not accustomed to sell; lowest, below which honest buyers generally do not buy; middle, which consists between each. - Generally, in necessary things concerning which contracts are often made, the lowest price is not very distant from the highest in the same place, and the middle price is easily known to all through what is called *le prix courant*, *le prix du marche*. But in superfluous things, especially when they are rarely sold, there is greater latitude, and scarcely is there found a current or common price.

746. (c) Conventional price is that which is determined by the free will of seller and buyer. Now all concede that things which have neither a legal nor a common price are justly sold at a conventional price, provided fraud, fear, or force is absent. For then the price is just because the contracting parties knowingly and freely agree about it, and besides there is no other way of determining it. - Thus it is, e.g., as regards works of art, precious gems of extraordinary size, ancient manuscripts, or other things of this kind which are sold only rarely; - likewise as regards things already worn by use, furniture not new; or as regards things concerning whose price both contracting parties doubt, when each consents to undergo the peril of the lot.

But the question is whether, even in things for which a common price is present, a conventional price distinct from the common one is licit.

747. 2. Controversy concerning the norm to be followed as regards just price. A twofold opinion is given.

(A) Others, more commonly, after St. Thomas,[1] teach that one must stand in justice by the common price, unless there is a special and legitimate reason for acting otherwise. For (a) when the price of some thing has been determined by the common estimation of honest persons, the contracting parties are judged to make a pact according to that price; and therefore, if it is exceeded, consent is rightly thought to lack due liberty; (b) if agreement alone sufficed for just price, the less prudent and watchful would often be deceived and despoiled by the more skilled, with great detriment to society, since from this the security of commerce would be endangered.

[1] St. Thomas, 2. 2., q. 77, a. 1.

(B) Yet a few theologians, both ancient and new, think that in all things the conventional price is legitimate, provided the contracting parties make a pact concerning it freely. For (a) the price is just when the seller and buyer agree about it knowingly and willingly, although it exceeds the limits of the common price: for then, whatever may be the case concerning common estimation, they think that in this particular case the thing is morally equivalent to the price; (b) besides, such today is the practice even of honest persons; civil laws favor this, while they sanction sales freely entered at whatever price, unless one or the other contracting party has suffered enormous injury; indeed defenders of the former opinion are compelled to admit so many exceptions that in reality in practice they do not differ much from the defenders of the other opinion.

748. 3. Practical conclusions. (a) In things which are accustomed to be sold frequently and commonly, generally one must stand by the current price in justice,[1] unless there is a special reason for acting otherwise.

[1] It can happen that the current price is unjust, either because of lies and frauds, or because of monopolies, which have been instituted by the principal sellers of some merchandise; then the authors of lies and monopolies sin against justice, as will be said below, where we treat of monopolies, n. 777; but other merchants who are deceived by these frauds, or are compelled to stand by the prices of monopolists lest they withdraw from the market and suffer ruin, are immune from injustice (Berardi, n. 643).

(b) But in things which are sold less frequently, and for which scarcely any current price is present, the conventional price can be held as just, provided fraud, force, or fear is absent.

(a) The reason for the former is that, where a current price is present, determined by the common estimation of honest persons, it can scarcely be conceived how the contracting parties knowingly and willingly make a pact concerning another price, unless there is a special reason for acting otherwise: for men are not accustomed, in onerous contracts, to buy above the highest price or to sell below the lowest, unless they are deceived in some way, or are compelled by some necessity.

(b) Besides, there are many things, such as houses, estates, horses, etc., for which scarcely any clearly and absolutely determined price is given, because their value depends on many circumstances of places, times, or persons. Then if two contracting parties, knowing very well the value of the thing not only extrinsic but also relative, and besides immune from every fear or force, freely consent to some price, it can generally be held as just: for if the buyer consents to pay more than the common price, this proves nothing other than that the thing, in his judgment, is worth more than it is worth according to common estimation. - But he who buys a thing at a cheaper price because the seller is placed in some necessity, - because, e.g., he needs money for paying debts, - is guilty of injustice.

749. 4. Applications. (A) On the titles on account of which it is permitted to sell a thing above the common price. Three titles of this kind especially are enumerated: - (a) emergent damage or ceasing profit; e.g., if someone, in favor of the buyer, sells merchandise which he intended to keep for another time, when it would have been dearer; or permits payment of the price to be deferred beyond the legal time; in these and similar cases, it is permitted to exceed the common price, provided the buyer is warned: for the damage which the seller suffers or the profit which he loses is something estimable by price.

(b) The special affection of the seller toward his thing; if the seller pursues his thing with special affection, on account of the utility or pleasure which it brings him, he can demand a greater price, because the lack of a specially loved thing is something estimable by price, and besides the buyer remains free to acquire the thing or not.

750. (c) The special utility of the thing with regard to the buyer, because, e.g., an estate is near the buyer's house. This indeed St. Thomas denies, whom many theologians follow; for then "the utility which accrues to another is not from the seller, but from the condition of the buyer. But no one ought to sell to another what is not his."[1] Yet today not a few theologians teach that this is a legitimate title for demanding a greater price, provided the seller does not abuse the necessity of the buyer; for the value of a thing is taken from its utility not only intrinsic and

absolute, but also extrinsic and relative; now an estate located near a house acquires greater value from this proximity; but this, as proceeding from the location of the field, truly belongs to the owner of the estate. Besides, today it is commonly admitted that the price of a thing is partly to be determined from the desires which it arouses; therefore those things can be sold for more which buyers more vividly wish to acquire. - Whence in practice those are not to be disturbed who sell more dearly things which furnish a special utility or pleasure to the buyer. - But it would have to be said otherwise if a greater price were demanded because the buyer is placed in necessity; for then he pays that price not freely, but as if compelled.

[1] St. Thomas, 2. 2., q. 77, a. 1.

751. (B) On the titles on account of which it is permitted to buy below the common price. Three can also be distinguished: (a) if someone buys things which he does not now need, in favor of a seller who lacks ready money; for by acting thus he furnishes to him an advantage which is estimable by price; (b) if merchandise is freely offered; for things freely offered become cheap, and, according to modern economists, the more abundantly they are offered, the cheaper in price they are worth; (c) if payment is made in advance, because then a convenience is furnished to the seller which is estimable by price.

752. (C) Corollaries. (a) Sometimes merchants sell below the common price in order to attract buyers, and thus indirectly bring some damage upon other sellers; and the question is whether such a manner of acting is unjust. Now of itself they do not wound justice, because by selling their merchandise at a cheap price, they use their own right. But if they attract buyers by lies and frauds, indeed pretending to sell below the common price, but at the same time adulterating the merchandise, or diminishing weights and measures, they commit injustice toward other sellers, from whom they turn away buyers by frauds; but not, strictly speaking, toward the buyers themselves, if they diminish the price in the same proportion as the quantity or quality of the merchandise.

753. (b) When contracting parties know from private knowledge that the price of some merchandise is soon to be increased or diminished, they can nevertheless buy or sell at the common price, provided they do not use lies or fraud; for they are not compelled to communicate their private knowledge to others, and besides, when they contract here and now, they are not held to regard the future value. - This is the practice even of honest persons, who try to buy things at the time when they are cheaper in price, so that they may sell them when they become dearer: for rights profit the vigilant.

But if officials or supreme magistrates have acquired this knowledge by force of their office, it is controverted whether they can use it for their own advantage, with detriment to others, before the matter is publicly divulged. Whatever the case may be, all admit that they act unjustly if they purposely delay making this knowledge public, for the end that they may be able to receive great profit therefrom, or if they manifest the same to a few friends before other citizens; for thus they abuse public office, and unjustly favor themselves or others, to the detriment of others.

754. (c) If a precious thing is displayed among common things, these things seem to be established: - if each contracting party is ignorant of the special value of the thing, the price about which they freely agree can be held as legitimate, because each incurs an equal danger of loss and has an equal hope of gaining. - If the buyer knows the value of the thing, while the other is ignorant, he can buy it at a cheap price, if there is scarcely anyone in this place who can know the value of this thing: for in this case the price is not determined by common estimation; otherwise, if there are skilled persons there who know the true price: for then there is a common price, by which one must stand. Nevertheless, some in this case are excused from injustice, on account of good faith. - Whatever the case may be, in these or similar circumstances, an upright and honorable man will pay the whole price, yet retaining for himself a profit proportionate to his industry and skill.

II. On The Offices Of The Seller.

These offices regard: 1. the qualities of the thing; 2. the manifestation of defects; 3. the handing over of the thing sold; 4. its assurance.

1. On The Qualities Of The Thing Sold.

755. (A) Principle: The thing sold must be at least morally the same as the thing sought, whether as regards species, or as regards qualities. - It is said morally, because if the thing sold indeed differs physically from the thing sought, but morally, and, so to speak, commercially is the same, equally useful to the buyer and apt for the intended end, the contract has force. - Otherwise it is invalid and illicit, for consent concerning one and the same thing is not present, since the seller has handed over a thing which, in common estimation, differs substantially from that which the buyer sought.

756. (B) Practical conclusions: (a) Therefore it is not permitted to substitute an artificial thing for a natural thing sought by the buyer, e.g., wine made chemically, not from the vine, - butter which is nothing other than oleomargarine, etc. Nevertheless, after the fact, if the thing handed over is not harmful, and besides the price is equivalent to the thing sold, restitution as regards the past is not to be urged, on account of the good faith which generally exists, but merchants are to be warned not to do this henceforth.[1]

[1] Sometimes merchants act thus because buyers do not wish to pay the price of the natural thing; then injustice indeed is not committed, but they would act more honorably if they openly said that the thing cannot be acquired at such a price.

(b) Nor is it permitted to adulterate things sought by the buyer, or to mix them with others of cheaper quality;[2] under this heading, he acts unjustly who so adulterates or mixes merchandise that buyers would not wish to acquire it at such a price, if the matter became known to them. But if the mixtures are such as are customarily made by merchants, and do not harm health, and besides the price is proportionately diminished, there is not injustice strictly so called, nor therefore an obligation of making restitution.

[2] How many and how great adulterations of this kind are, P. Delay shows in various facts in our days, in *Le Correspondant*, Feb. 23, 1903, p. 782-792. Some of these adulterations are specially prohibited by civil law; for France, cf.

Cod. pen., art. 423; Law of March 27, 1851; May 5, 1855; February 4, 1888; August 14, 1889; July 11, 1891; July 24, 1894; April 16, 1897; in Riviere, pp. 334, 392, 994, 1059, 1120, 1253.

2. On The Manifestation Of Defects.

757. (A) By natural law: (a) the seller must manifest to the buyer substantial defects, namely those which render the thing harmful, or unfit for the known end of the buyer; otherwise, true consent is not furnished, since no one intends to buy a harmful or plainly useless thing.

(b) As regards accidental defects, which only make the thing less useful for the intended end, the seller is held to manifest them if he is asked about them; otherwise he would use deceit and fraud, and thus would wound justice; a fortiori it is unjust positively to deceive the buyer by words or deeds, by using, e.g., illegitimate means so that the merchandise appears better than it is; for then a lie is committed, and indeed a harmful one. - But if he is not asked, the seller is not strictly held to lay open the defects of the thing, especially manifest ones, unless the buyer is inexperienced and says that he entirely trusts the seller; yet the price must be diminished on account of those defects, lest, all things considered, the highest price be exceeded. The reason is that the buyer himself must take care lest he buy a defective thing; if he is endowed with common skill and prudence, he can perceive manifest defects; but if he lacks this skill, he can and must ask.

758. These principles indeed are admitted speculatively by almost all. But in practice, there are not a few merchants who think it is licit in every case to conceal defects, even hidden ones, provided, once the contract has already been completed, they warn the buyer about the vices of the thing which could harm him. And these indeed, after the fact, are to be excused from so much, if not from the whole, nor are they to be compelled to restitution, unless they sold the thing above the highest price; but they are prudently to be warned not to deceive buyers henceforth.

759. (B) By French civil law,[1] redhibitory vices are recognized, on account of which the buyer can either return the thing and demand restitution of the price, or keep the thing and recover part of the price, according to the estimation of experts.

[1] *Cod. civ.*, art. 1641-1649, *Supplem.*, p. 149*; as regards redhibitory vices of animals, cf. Law of July 21, 1881; August 2, 1884; July 31, 1895, in Riviere, pp. 771, 902, 1318, and *Supplem.*, p. 149*, note 1.

Now for redhibitory vices, four conditions are required: (a) that the vices be hidden; for when they are manifest, so that they can be detected by common diligence, the rule is: let the buyer beware! (b) unknown to the buyer: for if, although hidden, they had been detected by the buyer, he is judged to have wished to acquire the thing, notwithstanding the defect; (c) existing at the time of sale, at least virtually; for, after the sale has been completed, the buyer himself undergoes the peril of the lot: hence he must seek rescission of the contract as soon as possible; (d) impeding or diminishing the utility of the thing, so that the buyer would not have bought it if he had known the defects.

When these four things are verified, the seller is held concerning redhibitory vices, whether he knew them or not. Nevertheless, if he is of good faith, he can exempt himself by a special pact from every obligation as regards defects; and, if he did not make this pact, he is held only to restore the price of

the thing and the expenses arising from the contract; but if he is of bad faith, he does not enjoy this privilege, but must compensate all damages brought upon the buyer.

If the thing sold has perished from a redhibitory vice, the seller is held to return the price and compensate damages; otherwise, if it has perished by fortuitous event or by the buyer's fault.

3. On The Handing Over Of The Thing Sold.

760. (A) The seller is held to hand over the thing sold to the buyer, that is, to transfer it into his power and possession; and indeed in that state in which it was at the time of sale, with all fruits which he has received from the day of the contract entered; at the time, place, and manner fixed beforehand, and if a pact is lacking, according to the prescriptions of civil law[1] or the custom received in this place. Otherwise, the buyer has a personal action against the seller, and a real action concerning the thing sold. - Nevertheless, if the buyer does not pay the price at the time fixed beforehand, or falls into a state of bankruptcy, the seller is not held to hand over the thing.

[1] *Cod. civ.*, art. 1604-1624, *Supplem.*, p. 146*; Planiol, n. 1448-1456.

761. (B) The seller is likewise held faithfully to guard the thing as a depositary until it is handed over to the buyer; wherefore, if by his fault it perishes or suffers detriment, he is held to repair the damage; but if by fortuitous event, he undergoes the damage who is the owner of the thing; now in France, dominion is transferred to the buyer even before handing over.

(C) Carrying away (*l'enlevement de la marchandise*) differs from handing over of the thing; this is done at the buyer's expense, unless it has been otherwise established by agreement or custom.

4. On The Assurance Of The Thing Sold.

The seller is held to furnish security to the buyer as regards possession of the thing and hidden vices.

762. (A) He must furnish security concerning the tranquil possession of the thing, against eviction; but eviction has place when the buyer is juridically compelled to hand over the thing bought to another, either wholly or in part, because, e.g., a mortgage creditor vindicates it. - And rightly indeed; for the seller does not acquire a right to the price except insofar as he transfers to the buyer the quiet possession of the merchandise. - Whence, if the buyer is disturbed, he must have recourse to the seller: but the latter will try to impede eviction, and, if he does not impede it, he is held to repair all the damages which the buyer has undergone, namely the price, the expenses of the contract, expenses made for pursuing his right, etc.

Nevertheless the seller is excused from assurance: (a) if he expressly said that he did not wish to furnish security against eviction, provided he is of good faith; or implicitly, by openly declaring the cause of eviction; for then the buyer takes upon himself the danger of eviction; (b) if the cause of eviction arose only after the sale, e.g., because of prescription which the buyer, although warned concerning this matter, did not interrupt; or if the buyer is evicted by his own fault.

(B) Moreover, the seller is held to furnish security to the buyer as regards hidden vices of the thing, as was said above, n. 757-759, and therefore to restore the price, or diminish it.

III. On The Offices Of The Buyer.

The buyer must pay the price and take away the thing.

[1] *Cod. civ.*, art. 1650-1657, *Supplem.*, p. 151*; Planiol, II, n. 1521-1532.

763. 1. To pay the price at the place and time fixed beforehand; and, if nothing special has been agreed upon, at the place and time at which the thing is handed over or ought to have been handed over; for if the thing has perished by fortuitous event, once the contract has already been entered, the buyer is not freed from paying the price. - If payment is deferred beyond the time fixed beforehand, a legal increase is owed provided this was agreed upon, or payment was expressly required, or the thing is fruitful; for otherwise damage is brought upon the owner. - Finally, if the buyer in no way pays the price, the seller can seek rescission of the contract, lest otherwise his rights be injured.

764. 2. To take away the thing, and indeed at the determined time, and, if nothing has been established, as soon as morally possible, lest from delay the seller suffer some damage. - If the buyer has neglected to take away the thing, the seller is no longer held to guard the thing, and, if he has preserved it, he can recover the expenses made for this reason. In France, when the matter concerns movable things, the contract is resolved in favor of the seller if the thing has not been removed after the time fixed beforehand (art. 1657).

IV. On Certain Species Of Purchase-Sale.

There are three concerning which it is necessary to speak, on account of the special difficulties which occur in them: sale through brokers, sale by auction, and monopolies.

1. On Sale Through Brokers (*courtiers*).

765. Brokers are called all those who buy or sell something in the name of another; they are called by various names: *courtiers*, *commissionnaires*, *commis voyageurs*, representatives of commerce.

They are as it were mandataries of those in whose name they act, and therefore must fulfill the obligations of mandataries.

766. Principles. (A) Brokers must faithfully conduct the business committed to them, namely with that diligence which they are accustomed to employ in their own affairs of the same kind; for they are chosen and receive a stipend for this reason, that they may faithfully conduct the affairs of the principal. Wherefore they are held to repair damages which have been brought upon the principal, because of culpable negligence in conducting the business, according to the principles set forth above, n. 466.

767. (B) They must hand over to the principal every profit which they receive in conducting affairs of this kind; for they act in his name, and receive from him a stipend or salary, and accordingly whatever they gain by negotiating, they acquire not for themselves, but for the owner.

Nevertheless they can retain for themselves part of the profit:

(a) if there has been a special agreement, by which, e.g., five percent is granted to the brokers; (b) if by extraordinary diligence, to which by force of office they were not held, they sold more dearly or bought more cheaply than had been established beforehand by the owner; in this, however, one must beware of illusions, which are so easily conceived.

Generally it is not licit for them to buy the thing for themselves at the established price, and afterward sell the same thing to others at a greater price, retaining the excess for themselves; for the owner is rightly judged to disapprove this manner of acting, since he gives them a stipend so that they may conduct his affairs in the best way possible. Nevertheless, if in a determined case, after diligence has been employed, they could not find anyone who wished to buy the thing for more, strictly speaking they can acquire it for themselves, provided they do this sincerely, taking upon themselves the danger of the thing, and if afterward they have made profit from it, they are immune from injustice.

Brokers can retain for themselves gifts which are given to them by merchants whose shop they frequent, provided however they are not induced thereby to conduct the owner's affairs badly or less watchfully.

But if merchants diminish the common price, generally brokers must hand over that profit to the owner; for since they receive a stipend, and do not have a right to a double payment, they cannot retain for themselves profit which accrues from the negotiation itself. Yet if there is moral certainty that this diminution of price is made in favor of the brokers, it can be retained by them, especially where custom is in force.

768. (C) The same must be said of servants who buy foods and other things of this kind for their masters: they can indeed receive little gifts from merchants, but generally speaking they cannot retain for themselves profit from diminution of the price (which in French is called *le sou du franc*); for of itself such profit accrues to the master, not to the servants, who already receive a salary. And in reality it is greatly to be feared lest merchants write down a greater price and impose it upon the masters, so that from this they may pay something to the servants, under the pretext of diminishing the price. - Nevertheless, if there is moral certainty that that diminution is truly made in favor of the servants, and not at the expense of the master, but of the merchant himself who in a particular case consents to yield part of his profit, servants licitly retain it for themselves. Moreover the same can be said if masters know this practice and tacitly approve or at least tolerate it, as a means of increasing the servants' salary. But it is to be desired that masters and servants make a clear pact concerning this, lest gradually, by these or similar less honorable means of making profit, the sense of natural equity be diminished.

2. On Sale By Auction (*vente aux encheres*).

769. (A) Notion. Sale by auction, which is also called auction, licitation (*vente a l'encan*, auction sale, *Versteigerung*) is that by which the thing to be sold is proclaimed through an auctioneer before several bidders, and adjudicated to the one offering the greater price. This indeed can be

voluntary or judicial,[1] according as it is done spontaneously by the owner, or established by law, e.g., for paying debts.

[1] As regards judicial auction, cf. *Code de procedure*, art. 702-717; *Cod. pen.*, art. 412.

770. (B) Principle. In a sale of this kind, the just price is judged not from common estimation, but from honest contest among the bidders; for here the matter concerns an aleatory contract, in which the one selling and the one buying commit themselves to equal danger of gain or loss; and accordingly, provided fraud is absent from each side, the price will be legitimate.

771. (C) Practical conclusions. Auction can be made in a twofold way: -

(a) In a fully aleatory manner, when namely the seller expressly or tacitly establishes that the price is to be determined by the bidding alone of buyers, without any intervention, and that the thing is not to be withdrawn, but handed over to the one offering more. Then it is not licit for him to send fictitious bidders, who, without the intention of buying, increase the price of the thing; and, even if a price below the common one is offered, he is held to yield the thing. On the other hand, buyers must not by fear, fraud, in one word, by illegitimate means, impede others from offering more, nor more probably make a pact about not bidding beyond such a price, or as regards such a thing; for otherwise they act unjustly toward the seller, who is deprived of greater profit, and toward the bidders, who are deprived of the hope of acquiring the thing. Nevertheless they do not commit injustice if only by persuasion or prayers they deter others from bidding.

772. (b) In the common manner, or not fully aleatory, when the seller explicitly or implicitly reserves to himself the right of increasing the price through himself or through others, and of retaining the thing for himself if no one offers a greater price; this indeed today often occurs. In this case, on the one hand, the seller can consult for himself by employing false bidders and by withdrawing the thing if too low a price is offered. On the other hand, buyers can protect their rights by making a pact together about not bidding beyond such a determined price; yet they cannot by force, fear, or fraud turn away other buyers from bidding, since these means are unjust.

773. N. B. (a) In either case, auctioneers wound justice if by unjust means they bring damage upon the seller or upon certain buyers: e.g., by holding the auction at a time when they foresee that there will be few bidders, by adjudicating the thing sooner or later, so that they may favor friends.

(b) The seller furnishes security as regards eviction of the thing, but not as regards vices, even redhibitory ones, unless it has been otherwise established by law or pact.

3. On Monopolies.

774. (A) Preliminary notions. Monopolies are of different kinds, especially legal and private. (a) A legal monopoly is the exclusive power of selling certain merchandise, granted to one or a few by public authority.[1] No one doubts that this is legitimate, provided it is contained within certain limits; for it is nothing other than one of the means by which the State can procure for

itself the money necessary for managing public affairs well; wherefore even if the price is much greater than the common price, injustice is not committed, provided the money procured in this way is employed for promoting the common good, and besides does not exceed the just limits of taxation.

[1] Not a few theologians describe here another legal monopoly, namely the privilege granted to authors and inventors of selling books or new inventions exclusively; concerning this it was said above, n. 42.

775. (b) A private monopoly exists when a few men by various means bring it about that they alone sell a certain kind of merchandise at a price pleasing to themselves, or make a pact with other sellers concerning a certain payment not to be sold below such a price; for thus the natural competition of merchants is impeded, and prices are determined according to the choice of a few.

Sometimes that pact tends only to correct the excess of competition; nevertheless sometimes it is entered so that a price greater than what is fair may be imposed upon buyers. Monopolies of this kind are instituted in various ways; sometimes various sellers or societies of sellers commit the whole administration of the matter to a few men, who can establish according to their choice all things pertaining to the production and sale of the thing: then what they call a *trust* is instituted; - at other times, they make a pact only about limiting the production or sale of some merchandise, and as regards other things they retain their liberty; this they call a *cartell*; - sometimes by common counsel they buy very great quantities of some merchandise, so that they can increase their price and receive very great profit therefrom: this indeed is called a *ring* or *corner*.[2]

[2] On the notion, advantages, and disadvantages of pacts of this kind, cf. Gunton, *Trusts and the Public*, New York, 1899; Ely, *Monopolies and Trusts*, New York, 1900; Jenks, *The Trusts Problem*, New York, 1900; Nettleton, *Trust or Competition?*, Chicago, 1900; de Rousiers, *Les Industries monopolisees aux Etats-Unis*, Paris, 1900; id., *Les syndicats industriels de producteurs, en France et a l'etranger*, Paris, 1901; Pohle, *Die Kartelle der gewerblichen Unternehmer*, Leipzig, 1898; Grunzel, *Uber Kartelle*, Leipzig, 1902; Sayous, *La crise allemande de 1900-1902*, Paris, 1903; Dolleans, *De l'accaparement*, Paris, 1902; Martin Saint-Leon, *Cartells et Trusts*, 1903, where all the other works are compendiously contracted.

Societies which are called *trusts* have been instituted in Great Britain and especially in the United States of America; others, which are named *cartells*, are in force in Germany, France, and other regions; *rings* and *corners* are commonly used among various nations by speculators.

776. (B) Principles. (a) Monopolies which are instituted for this end, that they may bring a remedy to the excesses of unbridled competition, and pursue this end only by legitimate means, and besides do not exceed the just price, are not illicit of themselves, but must be circumscribed by certain limits, lest they abuse their power to the detriment of citizens and of the republic.

1. They are indeed not illicit of themselves; for they pursue an honorable end by just means; for competition is as it were a blind force which of itself can produce good or bad effects; if it is in no way regulated, it tends to this, that it depresses the prices of things and the wages of workers in such a way that the latter can scarcely obtain daily sustenance; therefore it is expedient that, for restraining these abuses, some pact intervene among merchants of not selling below a certain price. Therefore nothing prohibits such a pact from being entered among various industrial and commercial societies, and honorable means from being employed

so that, insofar as it can be done, other merchants do not sell below a certain price, provided this is held as fair by upright and skilled men, all circumstances being considered.

In reality, by a pact of this kind entered among various societies, the expenses necessary for the production and distribution of things can be greatly diminished, whether by the use of more perfect machines, or by a better division of labor; likewise many damages necessarily arising from unlimited competition can be avoided; and thus the condition of masters and workers is made more secure.[1]

[1] Cf. Martin Saint-Leon, op. cit., p. 130-178; Gunton, op. cit., p. 213-238; Nettleton, op. cit., p. 15-42.

2. But they must be circumscribed by certain limits; for since the activity of man is finite, associations which seek too great an amplitude soon obtain an unhappy outcome, as is established from those things which recently happened in America; - moreover, if their authority increases too much, and all competition becomes impossible, the prices of things are increased beyond what is fair, because at the same time the accursed hunger for gold increases;[2] - likewise it is greatly to be feared lest they corrupt officials, magistrates, and other public men with money, and by unjust means obtain laws or judicial sentences harmful to the public good.[1]

[2] Mart. Saint-Leon, p. 148-163; Jenks, op. cit., chap. VIII.

[1] Martin Saint-Leon, op. cit., p. 187-205; Nettleton, p. 175-193.

777. (b) Those monopolies are unjust which are instituted for this end, that, competition having been utterly destroyed, prices may be imposed upon buyers according to the nod of sellers, or which use unjust means for overcoming other sellers. The reason is that in the former case damage is unjustly brought upon buyers, in the latter case upon other sellers.

Now not rarely unjust means are used against sellers who do not wish to adhere to the monopoly, e.g., by selling merchandise at a cheaper price in that city in which free sellers remain, so that these may be compelled to desert business, - by obtaining from administrators of railroads the faculty of transporting merchandise at a lower price (in English, discriminating rates), - by corrupting the servants (*employes*) of other sellers so that these may deceive their own masters.[2]

[2] M. Saint-Leon, p. 134-143; *Industrial Commission on Trusts*, t. I, pp. 20, 27, 277, 356, 772-774 and passim elsewhere; Nettleton, p. 204-206.

Whence in practice monopolies are full of dangers, unless they are restrained by fair laws, and their manner of acting is diligently inspected by upright officials.

§ II. On Lease-Hire.

778. Lease-hire in general is an onerous contract by which the use of a thing, or certain works, is promised for a certain price. And thus it is distinguished from loan for use, by which the use of a thing is granted to another gratuitously.

[3] Lugo, disp. XXIX; Lessius, cap. XXIV; Billuart, diss. VI, art. 1; St. Alphonsus, n. 857-864; Carriere, II, n. 766-821; Marres, lib. IV, cap. 9, n. 331-365; Ball. P., n. 856-882; Lehmk., n. 1125-1127; Noldin, n. 597-602.

From the very notion there is a twofold species of lease: lease of things and lease of works; the latter is likewise twofold: contract of labor, concerning which in the following paragraph, and undertaking of a work (*contrat d'entreprise*), concerning which we shall treat here.

I. On The Lease Of Things.

779. Lease of things is a contract by which someone obligates himself to furnish to another the enjoyment of some thing, for some time, for a certain price. There are several species of this lease: lease of houses and furniture (*bail a loyer*), - lease of rural goods (*bail a ferme*), - lease of animals (*bail a cheptel*); concerning these the various Codes must be consulted.[1] Here it will suffice to set forth general principles, while noting, however, that special stipulations can be added by the contracting parties themselves.

[1] For France, *Cod. civ.*, art. 1708-1830, in *Supplem.*, p. 155*.

780. 1. Obligations of the lessor (*bailleur*, proprietor). (A) He must hand over the thing to the lessee (*preneur*, tenant, farmer), - and indeed at the established time, so that he is held to repair damage arising from culpable delay, and also in a good state, so that it is apt for the use to which it is destined.

(B) He must preserve the thing in that state in which it remains apt for the use for which it was leased, and accordingly must complete the greater repairs necessary for conservation of the thing, but not the smaller ones which must be furnished by the lessee; but which repairs are smaller or greater is determined from the Codes and the usage of places; whence he cannot change the form of the leased thing, nor do anything else from which the enjoyment of the lessee is diminished.

(C) He must furnish tranquil enjoyment of the thing, and therefore render the lessee unharmed against hidden vices which impede the use of the leased thing, - and protect him against eviction or disturbance of right brought by a third party.

781. 2. Obligations of the lessee. (A) He must use the leased thing as a good father of a family, and indeed only for that use for which it was leased, expressly or implicitly, insofar as it can legitimately be presumed from the circumstances; if he abuses the leased thing, he is held to reparation of the damage brought, and moreover the contract can be rescinded. - He can sublease the thing, or cede the lease itself to another, for the same use, unless however this faculty has been forbidden by a special pact.

(B) He is held to pay the agreed rent at the established time, and in the manner fixed beforehand, or according to the custom in force in the region;[2] otherwise, the lessor has the right to keep certain movable things of the lessee so that he may be made secure concerning payment.

[2] Farmers leasing fields, when crops are less abundant, or fruits are sold only at a cheaper price, are not immediately and without mercy to be compelled to pay the whole price, under penalty of ejection; but equity and charity counsel that either something be remitted from the price of lease or a delay be granted to them so that they can pay the price without falling into a miserable lot. To the matter Lugo, l. c., n. 40: "It has been introduced from equity and kindness, that because of supervening sterility without the fault of the lessee... when no fruits at all are gathered, the lessee is freed altogether from paying the rent... But if the sterility does not remove all fruits, yet nevertheless is great and notable, the rent is diminished proportionately; but if it is slight, nothing is remitted." *Cod. civ.*, art. 1769.

(C) When the time of the lease has ended, he must return the leased thing in that state in which it was handed over, yet without being held to repair those things which have collapsed or been made worse by age and legitimate use. - If some damage has been brought, whether by the lessee himself, or by domestics or table-companions who are under his care, or by sublessees, he must compensate it, unless he proves that it happened without his fault. By natural law, he must at once repair damages arising from theological fault, but those which arise from juridical fault only after the sentence of the judge.

By French law, if a house has perished by fire, all tenants living in this house must pay a part of the damage proportionate to the price of the lease, unless they prove that the fire was kindled in another's room, or could not have been kindled in their place; this disposition indeed, as contrary to natural equity, does not oblige in conscience those who know very well that the fire was not kindled by their fault, at least juridical, or by the fault of those whose care they have.[1]

[1] Cf. *C. civ.*, art. 1734 and Law of Jan. 5, 1883. - On the various species of leases, *baux a loyer*, *baux a ferme*, *baux a cheptel*, see *C. civ.*, art. 1752-1778, *Sup.*, p. 159*; 1800-1830; Planiol, II, n. 1666-1822.

II. On The Lease, Or Undertaking, Of A Work (*contrat d'entreprise*).

782. 1. Nature of this contract. Lease of a work is a contract by which an architect, or craftsman, or commissioner is hired by the owner for accomplishing a certain work for a determined price, e.g., for building a house, or constructing a railway. - This can be done in a twofold way: namely so that the craftsman furnishes his work only, - or his work together with the material.

In a contract of this kind the price is established for the completed work, so that it is not owed until after the contractor (*entrepreneur*) has completed the work, unless it has been agreed otherwise; and therefore the danger of the work remains with the contractor until it has been completed and handed over.

Often the work to be completed is publicly announced, by setting forth and describing what thing is to be made, from what material, within what time, etc.; various contractors are invited to compete, and the thing to be made is committed to him who has promised to complete the work for the lesser price. In this matter good faith is required on each side: in the contractor, that he sincerely intends to complete the work for that price and under the determined conditions; in the lessor or owner, that he commit the work to him who asks the lesser price, provided however that he is fit for making the thing.

783. 2. Obligations of the contractor. (A) From justice he is held to make the thing in the manner in which it was agreed, namely to employ that diligence and that quality and quantity of material which had been agreed upon expressly by description, or tacitly by custom. Likewise he must be content with the established price; nevertheless, if the craftsman, because of changed prices of things or increased wages of workers, cannot complete the thing for that price without his own damage, he can ask something more. The owner is not held to believe him lightly, nor perhaps from strict justice can he be compelled to pay a greater price; for here the matter concerns a contract partly aleatory, in which the contractor undertook the danger of the thing; but equity demands that in

these circumstances, when the matter is certainly established, the payment be increased notwithstanding the pact, especially when a case supervened which could not be foreseen.

784. (B) He sins against justice who employs cheaper material, or lesser diligence, especially when from this the solidity of the work is diminished; for thus damage is unjustly brought upon the owner. - Yet this not rarely occurs in our days; and not a few contractors can sometimes be of good faith, when they employ cheaper material which nevertheless does not hinder the solidity of the building, and besides they consider this necessary lest they themselves incur damage; if it is foreseen that admonition concerning the past will be useless, they should nevertheless be cautiously deterred from these frauds for the future.

(C) They must complete and hand over the work at the agreed time, unless they are excused by some necessity; if by their own fault they have completed the thing later, they are held to compensate the damage brought from this.

785. 3. Obligations of the lessor or owner. (A) He must pay the established price at the time fixed beforehand; (B) if he asks that the thing be made in another manner than had been agreed, or that certain things be added to the work, he must compensate the greater expenses arising therefrom; (C) if by culpable delay he has neglected to accept the completed work, he is held to repair the damage brought upon the contractor from this.[1]

[1] Cf. *Cod. civ. gal.*, art. 1787-1799, in *Supplem.*, p. 163*; Planiol, II, n. 1897-1932. - Special rules as regards the transport of merchandise are set forth in *Cod. civ.*, art. 1782-1786, *Supplem.*, p. 163*; Bauf, *Droit Commercial*, Paris, 1903, p. 162-175.

§ III. On The Lease Of Works, Or On The Contract Of Labor.

786. Among those things which can be leased, works are enumerated; namely, today many men are given who lack the means by which they can carry on industry or commerce in their own name, and therefore are accustomed to lease to others their work or the faculty of working in which they are strong; the contract by which workers obligate themselves to labor in favor of some master, for a time, for a price, is called the lease of personal works, or, from modern usage, contract of labor. Concerning this, because of its importance, it is pleasing to discuss a little more fully: 1. on the contract of labor itself; 2. on wages; 3. on workers' associations; 4. on cessation from work; 5. on modes of improving the lot of workers.

[2] Lugo, disp. XXIX, n. 54-63; Lessius, cap. XXIV, dub. 4; Carriere, II, n. 801-806; E. J. de Gryse, *De contractu conductionis*, Roulers, Flanders, 1895; Antoine, *Cours d'Economie Sociale*, ch. XIX; Lehmkuhl, *Le Contrat entre Patrons et Ouvriers et les Greves*, Louvain, 1896; Pottier, *De Jure et Justitia*, n. 118-246; Vermeersch, *de Justitia*, n. 386-477; Hubert-Valleroux, *Le Contrat de Travail*, Paris, 1895; P. Bureau, *Le Contrat de Travail, le role des Syndicats professionnels*, Paris, 1902; L. Garriguet, *Le Contrat de Travail*, Paris, 1904; T. Rothe, *Traite de Droit Naturel*, t. IV, *Droit Laborique*, Paris, 1904.

I. On The Contract Of Labor Viewed Generally.

1. Historical Survey.

787. (A) Manual labor among the Greeks and Romans was lightly esteemed, and was committed only to slaves or men of a lower condition; hence Cicero said: "The earnings of wage-earners, and of all whose works, not arts, are bought, are illiberal and sordid. For in them the very wage is the pledge of servitude. Those also are to be considered sordid who buy from merchants what they immediately sell... Nor indeed can a workshop have anything freeborn."[3]

[3] Cicero, *De officiis*, lib. IV, 42; cf. Guiraud, *La main d'oeuvre industrielle dans l'anc. Grece*, Paris, 1900; Waltzing, *Etude historique sur les corporations professionnelles chez les Romains*.

Christian religion, on the other hand, ennobled labor: Christ himself labored with his own hands: "Is this not the carpenter?... Is this not the carpenter's son?"[1] St. Paul inculcated its necessity: "If anyone is not willing to work, neither let him eat";[2] he added example to precept:[3] "Nor did we eat bread from anyone without cost, but in labor and in toil, working night and day, lest we burden any of you." - Hence, in the first centuries of the Church, not only Christians, but also priests and monks, adhering to the footprints of Christ, did not disdain to labor with their hands.[4] In reality, in all the rules of monks, prescriptions are found concerning daily manual work;[5] and Augustine himself wrote a work on the work of monks, in which he exhorts them to labor, especially by the example and doctrine of St. Paul, and gravely rebukes those idle and wandering monks who, relying on the words of Christ, *Be not solicitous for your life what you shall eat*, under the pretext of being free for contemplation, indulged in laziness: "Indeed they can easily sing divine canticles even while working with their hands, and console the very labor as by a divine rowing-song (song of sailors)."[6] In reality, monks and their tenants, by diligent and assiduous labor, happily cultivated wooded and arid lands, and brought the greatest advantage to industry and the arts.[7]

[1] Mark, VI, 3; Matt., XIII, 55.

[2] II Thess., III, 10.

[3] Ibid., 3.

[4] Thomassin, *Discipline de l'Eglise*, p. III, l. III, ch. 8-16. - St. Anthony, among the rules which he handed down to monks, says these things: "When you have sat in your cell, be solicitous perpetually concerning these three things: namely concerning the work of your hands, concerning the meditation of your psalms, and concerning your prayer." *Regula S. P. N. Antonii*, *Codex Reg.*, t. I, p. 5.

[5] Rule of St. Benedict, cap. 48, in Migne, P. L., LXVI, 703, where it is said: "Idleness is the enemy of the soul. And therefore at certain times the brothers must be occupied in manual labor; again at certain hours in divine reading." - Cf. St. Jerome, *Regula Monachorum*, cap. 17, in Migne, P. L., XXX, 362.

[6] In Migne, P. L., XL, 565; let the whole treatise be read, 547-582.

[7] Levasseur, *Histoire des Classes ouvrieres*, Paris, 1900, t. I, p. 182-196.

788. (B) In the historical evolution of labor, three principal stages can be distinguished: slavery, colonate, and free contract of labor. (a) Before Christ, slavery flourished among almost all nations: but the slave labored not for himself, but for the master, nor did he properly receive a stipend, but only a certain peculium and food and clothing. Nevertheless a few free men, laboring under poverty, leased their work to the richer;[8] freedmen, or manumitted slaves, devoted themselves to various arts and commerce. This slavery indeed could be abolished only gradually.

[8] Among whom afterward Plautus, who describes servile labor in the work *Asinaria*.

(b) Around the fourth century the colonate (*servage*) began to flourish, or the state of those who were bound to some estate, and cultivated it in perpetuity: they were indeed not perfectly free, but of a middle condition between free men and slaves, since they could not leave the place and owner to whom they were ascribed; but they could acquire for themselves a house and other goods, and transmit them to their heirs; on certain days and hours they worked in favor of the owner, but, this time having been completed, they cultivated the part of the lands assigned to them, and made their own the fruits received therefrom.[1]

[1] On these see P. Allard, *Esclaves, Serfs et Mainmortables*, Paris, 1894, p. 158-398.

789. (C) Afterward serfs and tenants were gradually manumitted and became free, and gave their labor to various arts; then were instituted guilds, which flourished in the Middle Age, and, notwithstanding certain difficulties and disadvantages, contributed to the security of industry and to social peace through many centuries.[2] Workers, namely, distributed into various associations and confraternities (*corporations d'arts et metiers*), bore mutual help to one another, and circumscribed competition within certain limits, so that each one could receive sufficient profit; besides, generally dissensions and envies between workers and masters did not flourish, because each worker, after some time, could exercise his art in his own name as master. Guilds of this kind were utterly destroyed by the French Revolution, and "gradually it came about that workers, solitary and defenseless, were handed over to the inhumanity of masters and to the unbridled greed of competitors."[3] Wherefore modern socialists and some followers of Christian Democracy[4] desire that, the contract of lease of works as it now exists having been abolished, in its place there should be substituted a certain contract of cooperation, by force of which workers would obtain a part of the profit proportionate to their labor.

[2] The history, laws, and discipline of these guilds are described, among others, by Levasseur, *Les Corporations d'arts et metiers*, Paris, 1885; Martin Saint-Leon, *Histoire des corporations de metiers*, Paris, 1897; Blanc, *Les Corporations de metiers*, Paris, s. d.; Levasseur, *Histoire des classes ouvrieres avant 1789*, Paris, 1901.

[3] Leo XIII, Encyc. *Rerum novarum*.

[4] Thus, among others, Vogelsang and de Breda in the periodical *Oesterreichische Monatsschrift*, Vienna, 1885, fascic. 7.

2. On The Nature Of This Contract.

790. Concerning this matter there is controversy among jurists and economists.

(A) The principal jurists contend that the contract which intervenes between worker and master is truly lease-hire, insofar as the worker leases to the master his power of working for a certain price. This is indeed wholly consonant with the laws in force among different nations; for this pact is called *locatio-conductio operis faciendi* (lease of services or of work) in Roman civil law, and in modern Codes.[1] Yet today many oppose this concept, because it does not befit a free and rational being so to lease his faculties to other men.

[1] "When you deliver your labor, what indeed do you do? Do you not demand a wage? You sell your labor as the grocer sells his salt, his coffee and his sugar, as the baker sells his bread, as the butcher sells his meat." (Yves Guyot, *La Tyrannie socialiste*, Paris, 1893, p. 44; cf. P. Leroy-Beaulieu, op. cit., t. II, p. 241-244.)

(B) Hence others think that the contract of labor is a certain purchase-sale, by which the worker sells his works, or the exercise of his own activity, for some price.[2] Many indeed reject this, as by no means consonant with human dignity, since the work of a free man is not merchandise which can be bought for a price. - Yet it could be said, without injury brought upon the dignity of man, that not the work itself indeed is sold, but the fruit of labor, or the part of the thing produced which belongs to the worker because of the work consumed in the thing made; this seems especially true when such a price is given for such a thing to be made (*travail aux pieces*).

[2] P. Leroy-Beaulieu, *Traite*, t. II, p. 241-250.

(C) But others wish the contract of labor to be nothing other than a contract of partnership, by force of which the owner contributes his capital and the worker his works for completing a common work, and for dividing between themselves the profit received therefrom. - Thus, they say, better provision is made for the dignity of workers, for concord between workers and masters, and also for a more equitable partition of profits. - But as regards the fact, the matter is not so in the present state of things; besides, it seems difficult how the contract of labor could be entered in the praised manner: for, on the one hand, owners contend that the happy outcome of industry depends chiefly on the wise management of one and supreme authority, and therefore do not wish to have workers as partners, lest they be compelled to take their counsel; on the other hand, workers, needing a daily and certain wage for sustenance, cannot wait until the quantity of profit is determined and equally divided; moreover, by what proportion and measure profit is to be divided between workers and masters, according to the proportionate part of cooperation, can scarcely be defined.

(D) Wherefore some, with Funck-Brentano, think that the contract of labor is one of the innominate contracts (above, n. 616), namely, on the part of the worker, *facio ut des*, and on the part of the master, *do ut facias*, insofar namely as workers obligate themselves to furnish something for a certain price.

791. Conclusion. Whatever the case may be, all sensible men confess that a contract of this kind is of a special nature, since human works are not common merchandise, but bear before themselves something human, and therefore must be governed by more humane laws than merely commercial things.

To the matter Leo XIII says: "Accordingly labor has, as it were, two notes implanted by nature in man, namely that it is personal, because the active force adheres to the person, and is wholly proper to him by whom it is exercised, and for whose utility it is born; then that it is necessary, for this reason, that the fruit of labors is needed by man for preserving life: but nature herself, to which one must chiefly obey, commands that life be preserved."

Moreover, the same Pontiff testifying, it is a very great evil to imagine that the wealthy and proletarians are prepared by nature to fight among themselves in stubborn duel; this indeed is abhorrent from reason and truth; for, just as in the human body diverse members agree among themselves for cooperating harmoniously, so in the state those two classes must act harmoniously among themselves; indeed one absolutely needs the other: capital cannot stand without work, nor work without capital. Wherefore concerning the mutual offices of workers and masters, according to the mind of Leo XIII,[1] a few things remain to be said.

[1] The rules handed down by Leo XIII were renewed and confirmed by Pius X, in a *Motu proprio* issued Dec. 18, 1903, in which he sets forth fundamental norms of Christian popular action, in *Acta S. Sedis*, XXXVI (1904), p. 339-345.

3. On The Offices Of Workers.

792. These are thus contracted in the Encyclical *Rerum Novarum*: "That which has been freely and equitably agreed upon as work, they should render integrally and faithfully; they should in no way harm the property, nor violate the person of the masters; in protecting their own interests they should abstain from force, and never introduce sedition; nor should they mix with wicked men, artfully throwing out immoderate hopes and great promises, which generally have useless repentance and consequent ruins of fortunes." Let us explain these offices in a few words: -

793. (A) To furnish integrally and faithfully that which has been freely and equitably agreed upon, or, in other words, to perform the determined work at the fixed time, with that diligence which is required from pact, law, or custom. Generally ordinary or common diligence suffices; but, in certain cases, special care is required, namely when from pact or from the nature of the matter it is exacted, and besides a greater stipend is furnished. This indeed obliges from justice, as flowing from the contract itself: for the worker does not make the wage his own unless he integrally and faithfully fulfills the work which he freely promised to furnish; for here the matter concerns a bilateral contract, which obliges each contracting party from justice.

Therefore workers sin against justice who from culpable carelessness or negligence spend time uselessly;[1] and the gravity of the sin depends on the gravity of the damage brought.

[1] Honest workers understand this besides; thus among them the axiom is in force: "a fair day's work for a fair day's wages," that is, honest work for a decent wage. (Bureau, op. cit., p. 252.)

794. (B) In no way to harm the master, that is, to bring no damage, whether by using materials prodigally, or by destroying machines, or by producing defective merchandise; for by these and other means of this kind, injury is brought upon the owner or upon the buyer of the merchandise, and often upon each. The gravity of the sin likewise depends on the gravity of the damage foreseen. - Besides, such acts are prohibited by civil law and punished with fines.[2] But if damage arises from fortuitous event, the worker is not held to compensate it, nor on account of this does he lose the right to the agreed stipend.

[2] As regards France, cf. P. Pic, *Traite de Legislation industrielle*, Paris, 1903, n. 1147. "The worker is responsible for deteriorations caused by his negligence to the material entrusted to his care, as well as for faulty workmanship arising from his fault." (Cass., Feb. 15, 1892.)

795. (C) Nor to violate the person of the masters, that is, to bring no injury upon the masters themselves, by insults, threats, cruelties, and other violent modes of acting. Workers indeed have the right of pursuing their rights by legitimate means, by instituting associations, and by manfully setting forth to masters what they desire, and concerning what things they legitimately complain; likewise they have recourse to magistrates, and can choose deputies who may procure the promulgation of just laws protecting their rights. But to move sedition and to employ force or calumnies is neither just nor opportune; those acting thus generally harm not only masters, but themselves, since the ruin of some factory is accustomed to bring more detriment to the latter than to the former. - To judge concerning the gravity of an injury brought, the principles set forth above (n. 285) must be recalled to memory, yet having before

one's eyes the psychological dispositions of workers who, not rarely moved by anger and indignation, do not perceive the whole malice of their act.

In practice, therefore, let workers diligently keep away wicked men who, pretending that they hold nothing older than the good of proletarians, in reality are chiefly solicitous about their own advantages, and stir up immoderate hopes, falsely promising goods which it is impossible to obtain, for the sole end that they may obtain the votes of workers, and, these having been obtained, may be able to seek honors and monies.

(D) Not to cease from labor before the fixed time, unless there is a grave reason; concerning this below.

4. On The Offices Of Masters.

Some arise from justice, others from charity.

796. (A) Offices from justice. (a) To pay a fair wage at the established time (*Codex*, c. 1524):

"Among the greatest offices of masters," says Leo XIII, "this stands out: to furnish just things to each one... But to defraud anyone of the wage owed is a great crime, which calls down avenging wrath from heaven by its cry: Behold the wages of the workers... which have been defrauded by you cry out: and their cry has entered into the ears of the Lord of Sabaoth."[1] But what wage is just will be explained below.

[1] James, V, 4.

797. (b) To revere in workers the dignity of the person ennobled by the Christian character:

"Workers must not be held in the place of slaves; it is fair to revere in them the dignity of the person, ennobled, indeed, by that which is called the Christian character. Gainful arts, if the account of nature and Christian philosophy are heard, are not for shame to man, but for honor, because they furnish an honest power of sustaining life. It is truly shameful and inhuman to abuse men as things for gain, and not to value them more than according to how much they are strong in nerves and powers."[2]

[2] Leo XIII, Encyc. *Rerum novarum*.

And rightly; not rarely workers complain that they are held as slaves, indeed as mere instruments of production, with no respect had for their dignity. They must indeed furnish obedience to masters in all those things which pertain to the agreed work, during the hours of the day in which they submit themselves to their command;[3] but when this time has been completed, they remain free, nor do masters have the right to attempt anything against their liberty and conscience.[4] Moreover, while they preside, they must command in a human manner, demanding nothing which is too burdensome.[1]

[3] So that the rules for the right ordering of industrial matters may be better preserved, it is expedient that they be approved not only by masters, but also by delegates of the workers; this can be done in a council which is called *Conseil d'usine*, Shop council. Cf. E. Riviere, *Vingt ans de vie sociale*, Paris, 1901, p. 61-82.

[4] Hence if a Christian master wishes to lead irreligious workers back to the faith, he must act prudently, by examples and persuasion, without urging them to embrace religion, lest perhaps he favor hypocrisy: "The Christian head must,

while giving example, strive to surround these souls with an atmosphere of love and devotion, also of liberty, so that they may open themselves to the truth." (E. Riviere, op. cit., p. 78.)

[1] This indeed they will furnish much more easily if sometimes they do not hesitate to take the counsel of certain workers. Cf. E. Riviere, op. cit., p. 40-43; 55-56; 80-81.

798. Wherefore the master is held from justice to grant to workers a suitable space of time, so that they may be free for religious duties: for they have a strict right to fulfill such duties, nor can they be deprived of it by any pact of labor; therefore rest from works must be granted on feast days, unless because of some necessity; and if, in some industries, certain workers must labor on any Sunday, nevertheless there must be allotted to them a space of time necessary for fulfilling religious duties. - He must also take care that they not be exposed to the allurements of corruptions and enticements of sin; wherefore in those workshops in which men and women, and also younger persons of each sex, labor together, the office is incumbent upon masters of employing those means by which proximate occasions of sin are removed, insofar as this can be done;[2] e.g., lest scandal arise from impious or lustful conversations,[3] or foremen (*contre-maitres*) abuse their authority to extort something which is repugnant to the moral law.

[2] Cf. L. Harmel, *Catechisme du Patron*, Paris, 1889, p. 31-93.

[3] Thus, e.g., a Catholic master, who counted not a few positivists among his workers, with these approving, proposed the following rules to all: "As a convinced Catholic, I ask those of my workers who do not share my convictions to abstain from conversations contrary to my religious ideas. For this I appeal to their sympathy toward a head who sincerely loves them and who will never ask them for an act contrary to their personal convictions. - As a father of a family, having charge of souls before God for the apprentices entrusted to my care by their parents, I ask all my workers to abstain from immoral conversations. Fathers of families would not speak thus before their children; unmarried workers would not hold such remarks before their mother or their young brother." (E. Riviere, op. cit., p. 73-74.)

"Nor is it permitted by any pact to lead them away from domestic care and the study of thrift," that is, nothing is to be attempted which utterly overturns the family and domestic life, namely by impeding the education of offspring, by separating men from wives for a long time, so that domestic life becomes almost impossible. Nor let anything be done to attract workers into taverns, in which they uselessly consume their resources, to the great detriment of the whole family.

799. (c) "Likewise, not to impose more work than their strength can bear, nor that kind which is at variance with age and sex." For from what was said above (n. 314-315), it is not permitted to command those things from which death or mutilation or loss of health will very probably follow. Therefore, if from the materials which are worked, or the machines which are employed, or from the manner in which labor is performed, or from other causes of this kind, a very probable danger threatens the life, integrity of members, or health of workers, precautions must be used by which the danger is removed. But if it is impossible to avert every danger, in proportion to the probability of the danger, the amount of wage is to be increased, or damages brought in executing the work are to be repaired by fair compensation. - Hence also, if a worker laboring for the utility of the master is wounded, mutilated, or killed from a fortuitous event, compensation is owed to him or to his family; for since the master makes the profit his own, it is fair that he likewise undergo the damages and dangers of the lot. This indeed among most nations has been confirmed by civil law.[1]

[1] In France, by civil law this compensation is owed even when workers were wounded by their own fault or carelessness (Law of April 9, 1898; Law of June 30, 1899; Law of March 22, 1902); in this case, however, the law, as less consonant with natural law, does not oblige before the sentence of the judge; indeed workers would commit injustice toward masters if they deliberately exposed themselves to some mutilation, for the end of obtaining monetary compensation. - Cf. P. Pic, op. cit., n. 1036-1145, where the advantages and disadvantages of this law are set forth at length, and also the laws which are in force among other nations.

800. Moreover daily labor must not be prolonged excessively, lest the strength of the worker be exhausted; but according to the different account of labor, the hours consumed in work must be longer or shorter.

The principle which must be kept before the mind Leo XIII sets forth thus: "Namely, that so much work be demanded that the spirit grow dull from excessive labor, and at the same time the body succumb to exhaustion, neither justice nor humanity suffers... But how great the intervals of resting ought to be must be judged from the varied kind of work, from the circumstances of times and places, and from the very health of the workers. Those whose work it is to cut stone from the earth, or to dig out iron, copper, and other things of this kind lying deeply hidden, their labor, because it is much greater and also grave for health, must be restrained by shortness of time. The seasons of the year must also be considered: because not rarely the same kind of work is easy to tolerate at one time, but at another time either cannot be tolerated by any reason, or cannot be tolerated without the greatest difficulty."[1]

[1] In France, by the law of Nov. 2, 1892 (in Riviere, *Lois usuelles*, p. 1170-1173), the law of June 12, 1893 (Riviere, p. 1206), and the law of March 30, 1900, the hours during which women and children may labor have been limited, and many other things concerning the healthfulness and security of workshops have been established; concerning these see P. Pic, op. cit., n. 609-869. - That these laws were necessary for restraining abuses following from competition can be gathered from these works: Villermé, *Tableau physique et moral des ouvriers employes dans les manufactures de soie, de laine et de coton*, Paris, 1840; J. Simon, *L'ouvriere*, Paris, 1861; d'Haussonville, *Salaires et Miseres de femmes*, Paris, 1900; Pelloutier, *La Vie ouvriere en France*, Paris, 1900; Levasseur, *L'Ouvrier americain*, Paris, 1898, t. I, p. 422-451; H. Campbell, *Prisoners of Poverty*, Boston, 1887; H. J. Brunhes, *Les conditions de travail de la femme dans l'industrie*, in *Quinzaine*, March 1904; id., *L'Exploitation de la femme*, Paris, 1904.

801. Nor let labor be imposed on women which exceeds their strength, or does not befit their sex: "Thus certain crafts are less aptly suitable for women, born for domestic works: which works indeed greatly protect honor in the female sex, and by nature correspond to the instruction of children and the prosperity of the family." In reality, since women are born primarily for procreating and educating offspring, and for exercising the offices of mother and wife at home, labor incompatible with these duties must not be assigned to them. - Wherefore in many regions it has been provided by civil law that they be immune from certain kinds of work, and moreover, a little before and after childbirth, that they be free from all arduous labor.

802. Nor is it permitted to entrust to children works for which performing they are not yet equal: "For powers breaking forth in childhood, like greening freshness, are struck down by premature agitation: from which thing all childish instruction will perish." And because abuses have not been lacking in this matter, the State had to pass laws for protecting younger persons against the inhumanity of certain masters.

803. (B) Offices from charity. The master must exercise not only justice, but also charity toward workers. Leo XIII recalls to memory the foundation and reason of this office:

"For all men will plainly perceive and understand that they were created by God as a common parent: that all tend to the same end of goods, which is God himself, who alone can affect both men and angels with perfect and absolute beatitude; likewise that each one equally has been redeemed by the benefit of Jesus Christ and claimed into the dignity of sons of God"... - From this it follows that upon the richer is incumbent the office of lavishing something from superfluous goods upon the poor: "Whoever has received a greater abundance of goods by the gift of God, whether they are of the body and external, or of the soul, has received them for this reason, that he may employ them for the perfection of himself and likewise, as a minister of divine Providence, for the utilities of others."

This obligation indeed urges masters by a stricter bond as regards their own workers.

For, as Card. Zigliara said,[1] "the work of the worker yields to the advantage of the master; therefore as often as the latter is driven by the precept of charity to exercise the offices of charity in individual cases, he is also held to observe the order of charity. This order indeed makes workers exercising long-lasting work for the master's utility nearer to the master than other poor persons doing nothing for him. Wherefore the master who is able to exercise the offices of charity must prefer his own workers."

[1] Letter to the Archbishop of Mechlin, sent by order of Leo XIII, 1891.

804. But the master can exercise this charity in various ways: - (a) first, by kindly receiving the workers, at least at certain hours, when they desire to approach him, and by kindly receiving delegates sent by the workers themselves: for experience establishes that nothing contributes more to peace and concord than more frequent relations between owners and workers, in which, by an honest and sincere exposition from each side, the motives of complaints are declared, and also the changes which are judged useful on each side;

805. (b) by favoring various institutes, by which the condition of workers can become better, e.g., schools for the education of boys, cooperative societies by which useful things can be acquired at a lower price, associations by which workers furnish mutual help to one another, etc. But in all these things let the master diligently beware lest he so insert himself into the management of affairs that workers seem to depend altogether on him; for there is in them an innate love of liberty, and a sense of distrust toward masters, so that many prefer to be poor and miserable rather than abdicate their own liberty. From this it has happened that not a few have stirred up rebellion against masters, notwithstanding the many benefits which they had received from them, because rightly or falsely they judged themselves too oppressed by the authority of masters.[1] Therefore let charity be exercised in such a way that it does not seem to oppress the liberty and dignity of workers.

[1] Cf. P. Bureau, *Montceau-les-Mines et le Paternalisme,* in *La Quinzaine,* April 1, 1902. - Wherefore these things should often be kept before the eyes: "Love of the worker, disinterested love, not to hold him eternally, but to elevate him and draw him toward the heights: behold the true solution of the social question." (de Mun, in E. Riviere, op. cit., p. 5.)

5. On The Intervention Of The State In The Contract Of Labor.

806. (A) State of the question. Much is disputed on this matter among the various schools of economists. (a) The so-called liberal school[2] contends that the State has no right of making new laws concerning relations between workers and masters, but that the general laws concerning contracts in general and concerning lease fully suffice for restraining abuses, if any arise; in reality, they say, every year the condition of workers becomes better, industrial and commercial matters prosperously succeed; if there are any dissensions, they are composed by the natural force of free competition; the intervention of the State, far from profiting, greatly harms both masters and workers.

[2] A. Smith, *Wealth of Nations*, rendered in French *La richesse des nations*; Ricardo, *Principes d'Economie Politique*; J. B. Say, *Traite d'Economie politique*; de Molinari, *Precis d'Economie politique*, Paris, 1893; Hubert-Valleroux, op. cit.; P. Leroy-Beaulieu, op. cit., who nevertheless does not reject a certain moderate intervention of the State.

(b) But on the contrary, socialists of various schools[3] cry out daily that the lot of workers is altogether intolerable, that unbridled competition, such as flourishes, is a blind and cruel force by which proletarians are trampled under the feet of the richer: from this just complaints and perpetual dissensions have arisen, which can be settled only by continual intervention of the State; and by such intervention the way is prepared for socialism and collectivism, by whose help social concord will reign in perpetuity.

[3] Their works we enumerated above, n. 66-70.

807. (c) Between these two extremes there are today not a few economists who defend moderate intervention of the State, although they by no means agree concerning the extension and limits of this intervention.[4] Catholics generally adhere to their doctrines, yet in different degree; thus the school which is called Angers approaches nearer to the liberal school, and admits the intervention of the Republic only for protecting the rights of private persons and restraining abuses.[5] The school named Liege proceeds further,[1] according to which the State must not only restrain abuses, but also prevent them, by making various laws, especially concerning the labor of children and women, concerning hours consumed in working, concerning means for protecting the health of workers, etc. The Austrian school proceeds still further, which, joining Christian democracy with anti-Semitism, expects an almost universal renewal of the whole economic order, and meanwhile wishes the amount of wage to be determined by the State, and cooperative societies to be instituted by it, so that for the contract of labor, such as now exists, the contract of cooperation may be substituted.[2]

[4] Among whom Cauwes, *Cours d'Economie Politique*; Ch. Gide, *Principes d'Economie politique*; P. Pic, *Traite de Legislation industrielle*; V. Brants, *Legislation du travail, comparee et internationale*, Louvain, 1903; R. Jay, *La Protection legale des travailleurs*, Paris, 1904.

[5] This school is called Angers because it held a congress at Angers, presided over by Bishop Freppel, who set forth his mind thus: "Individual liberty, liberty of association with all its legitimate consequences, intervention of the State limited to the protection of rights and to the repression of abuses; behold, gentlemen, my formula in the question of labor." (In *Revue Catholique des Institutions*, 1890, t. II, p. 416 sq.) Thus also Claudio Jannet, *Le socialisme d'Etat*; J. Rambaud, *Elements d'Economie Politique*; Thery, *Exploiteurs et salaries*; d'Haussonville, *Socialisme et Charite*, Paris, 1896.

[1] It is called Liege because the principal principles which it advocates were set forth in the Congress of Liege, in Belgium; among its followers are enumerated: de Mun, *Discours sur la Question sociale*; de la Tour du Pin, L. Harmel,

Gayraud, Lemire, Ketteler, Korum, Winterer, Lehmkuhl, H. Pesch, Cathrein, Meyer, Pottier, Decurtins, Liberatore, Toniolo; see their doctrines set forth in Antoine, S.J., *Cours d'Economie sociale*, and Pottier, *de Jure et Justitia*.

[2] This school flourishes especially in Austria, and its principal followers are de Liechtenstein, Blome, Vogelsang, Lueger, whose program is briefly contracted thus: "1. Establishment of a just relation between production and consumption; 2. guarantee of stable employment for workers, with the possibility of a progressive wage and of professional advancement; 3. guarantee of suitable treatment for aged or invalid workers, for old men and orphans; 4. corporations accredited by the State or the great financial establishments, so that workers may profit from mechanical manufacture and from production on a large scale; 5. legal measures necessary to procure suitable housing for workers." (In *Association Catholique*, XXVII, 1889, p. 667.)

So that we may proceed safely in this variety of opinions, we shall set forth the very doctrine of Leo XIII (Encyc. *Rerum Novarum*).[3]

[3] Cf. L. Gregoire (Goyau), *Le Pape, les Catholiques et la Question sociale*, Paris, 1899, p. 174-240; A. Leroy-Beaulieu, *La Papaute, le Socialisme et la Democratie*, Paris, 1893, p. 156-179.

808. (B) General principles. (a) The State must not so involve itself in private matters that it usurps the rights of citizens or of families: "It is not right, as we have said, for the citizen or the family to be absorbed by the Republic: it is fair to permit to each the faculty of acting with liberty, as much as can be done with the common good unharmed and without injury to anyone." For private men are not ordered to the state as to an end, but the state is ordered to them, namely so that it may promote their good; and therefore the activity of citizens must not be so restricted that it seems to be absorbed, but only so directed that it tends to the common good. - The family likewise is older in time and prior in right than the state, and therefore its rights are not to be absorbed by the State, but rather protected. Therefore nothing is to be attempted which harms conjugal society, parental authority, or the relations which, nature dictating, ought to exist among the members of the family.

809. (b) The State can make certain laws concerning the contract of labor, favoring masters and workers equally. For it can and must promote whatever is necessary for the common good: supreme authority has been instituted for this.[1] But the common good demands that peace and concord reign between masters and workers: for this end laws contribute greatly which favor not one order of citizens, but workers equally with the rich:[2] for both labor together for the prosperity of the Republic.

[1] "Accordingly those by whom the state is governed must first bring their work generally and universally by the whole account of laws and institutes, namely by bringing it about that from the very conformation and administration of the republic prosperity of both the community and private persons spontaneously flourishes." (Encyc. *Rerum Novarum*.)

[2] "For proletarians are, by nature, citizens by equal right with the wealthy, that is, true parts and living lives, from which, with families interposed, the body of the republic consists: not to add this, that in every city they are by far the greatest in number. Since therefore it is altogether absurd to consult for one part of the citizens and neglect another part, it follows that public due cares must be placed in protecting the safety and advantages of the proletarian order." (Ibid.)

Nevertheless, although public power must provide for the rights of each order, it can and must specially protect the lowest and the needy, especially when by their own powers they cannot vindicate their rights; for the rich less need public guardianship, while the miserable common people, relying on no resources of their own, more need the patronage of the Republic.[3]

[3] Thus Leo XIII (cited Encyc.): "Indeed, the nation of the rich, surrounded by its own defenses, less needs public guardianship: the miserable common people, safe by no resources of their own, relies chiefly on the patronage of the republic. Wherefore the republic must embrace wage-earners, since they are numbered among the needy multitude, with singular care and providence."

810. (c) The intervention of the State is legitimate and necessary as often as grave detriment has already been brought, or threatens, to common affairs or to the interests of individual orders, which cannot be healed or prevented in another way.[1] For, on the one hand, it is all over with the public good if supreme authority cannot intervene, - whether by promulgation of laws, or by faithful execution of the same, - when grave detriment has been brought upon society, or even upon one order of citizens, or very probably threatens, which otherwise cannot be averted; for then the end on account of which the State was instituted is no longer attained: the more powerful oppress the weaker by force or fraud, until the latter, overwhelmed by evils which cannot peacefully be averted, finally at some time stir up seditions, and by sword, fire, and other violent means pursue the vindication of their rights. - On the other hand, when threatening damages can be effectively forestalled in another way, whether by the industry of private persons, or especially by rightly ordered associations of masters and workers, it is not expedient to have recourse to the State; for excessive intervention restrains private activity and vigilance, and gradually induces a certain idleness and incapacity of citizens, - multiplies public offices and duties, and therefore public expenses, while on the contrary free undertakings of industry and commerce are diminished, - extends too much the power of political men and party zeal, and thus prepares the way for tyranny.[2] - Wherefore with Leo XIII we conclude: "namely, no more is to be undertaken by laws, nor is one to proceed further, than the healing of inconveniences or the removal of danger requires."

[1] "If therefore some detriment has been brought or threatens to common affairs, or to the interests of individual orders, which cannot be healed or prevented in another way, it is necessary that public authority meet it." (Encyc. *Rerum Novarum*.)

[2] How easily politicians, even when they boast that they adhere to democracy, indulge tyranny, can clearly be gathered from the things which Taine wrote, *Origines de la France contemporaine*; cf. P. Martin, in *Etudes Religieuses*, Nov. 1891, p. 375.

811. (B) Applications. Leo XIII enumerates the principal applications of this principle thus:

"Wherefore if at any time it happens that some disturbance threatens because of the secession of workers, or works interrupted by agreement (*greves*, strikes); that the natural bonds of the family are loosened among proletarians; that religion is violated in workers by not sufficiently imparting opportunity for the offices of piety; if danger threatens in workshops to the integrity of morals from the promiscuous sex, or from other pernicious incitements of sin; or if the order of masters presses the order of workers with iniquitous burdens, or afflicts them with conditions alien to the person and to human dignity; if health is harmed by immoderate work, and one not accommodated to sex or age, in these cases the force and authority of laws must plainly be applied, within certain limits."

(a) The reason is that, in these and similar matters, the zeal and industry of private persons by no means suffice for restraining abuses, as is proved by almost universal experience. For those evils began to rage as soon as great industrial workshops were built;[1] indeed excellent citizens, whether

privately or collegially, tried for many years to restrain or forestall them, yet with an unhappy outcome. Wherefore, among all peoples, even the English and Americans, although tenacious of private rights, it was necessary to make laws for protecting the rights of workers.[2]

[1] Cf. Villermé and J. Simon, op. cit.

[2] R. Jay proves this by many documents, *La Protection legale des Travailleurs*, Paris, 1904, p. 7-49; for England, cf. *Final Report of the Select Committee of the House of Lords on the Sweating System*, 1890; Sidney Webb, *The Case for the Factory Acts*, London, 1900; - for America, Levasseur, op. cit., t. I, p. 198-225; 422-451; N. M. Auten, *Some Phases of the Sweating System*, in *The American Journal of Sociology*, March 1901, p. 602-645; for France and other regions, P. Pic, op. cit. - Hence an international society was instituted for protecting the rights of workers, whose statutes can be read in R. Jay, op. cit., p. 225-234.

Now such constant and universal experience clearly demonstrates that private industry is unequal to restraining at least certain abuses.

812. (b) In reality, by force of ineluctable competition, which flourishes not only among merchants of one region, but also among the various nations of the world, producers of things tend daily to this, that they may diminish the prices of merchandise, so that they may be able to sell the same more easily; but they cannot furnish this unless lesser expenses are made in producing the merchandise. From this it follows that, by a certain insuperable necessity, they choose those workers who are content with a lower wage, and consent to labor for a longer time. There are indeed many among them who are upright and merciful, and sincerely desire to act kindly with workers; but if they themselves pay a greater wage or demand less prolonged work, while others act otherwise, soon they will not be able to sell their merchandise at the same price as those others, but will be compelled to dismiss workers and close workshops.[1]

[1] P. Bureau vividly sets forth these effects of competition, op. cit., p. 123-134.

And thus the doctrine of Leo XIII is confirmed both by experience and by reason.

II. On The Wage Of Workers.

Since the chief office of the master is to pay a fair wage, we shall speak: 1. on the norm of a just wage; 2. on the means by which the wage can be increased.

[2] Besides the works already cited on the contract of labor, cf. Walker, *The Wages Question*, New York, 1876; Beauregard, *Essai sur la theorie des salaires*, Paris, 1887; J. A. Ryan, *A Living Wage*, New York, 1906; Dalla Volta, *Le forme del salario*, 1893; D. Schloss, *Les modes de remuneration du travail*, Paris, 1902, translated from the English *Methods of Industrial Remuneration*; L. Garriguet, *Le Salaire*, Paris, 1903.

1. On The Norm Of A Just Wage.

This is a truly arduous question, concerning which there has been much dispute among economists and theologians.

813. (A) The system of the liberals. According to the liberal school, the wage is defined, like the price of merchandise, by the sole and free agreement between worker and master, and therefore the stipend which the master offers and the worker accepts must be held as just; in practice, therefore, it is regulated by the law of competition, by force of which wages are

increased or diminished according as owners more or less need the labor of workers. For, on the one hand, the master will weigh the utility which accrues to him from the use of the operative faculty of workers, and its scarcity or frequency; but on the other, the proletarian will weigh those things which are required for honorable support; and, if he is truly free, he does not promise to furnish his work except to him who pays back those things which are necessary for honorable support. Moreover, in almost all places, there exists for each kind of work a current price, to which workers and masters adhere, unless special circumstances occur.[3]

[3] "In fact, the debate is not long, because there exists on each worksite, in each workshop, one can say in each locality, a current price applicable to each profession or specialty and from which one scarcely departs, unless there are special circumstances, or exceptional ability of the worker, if he is noticeably above the ordinary." (Hubert-Valleroux, op. cit., p. 176.)

814. Nevertheless this norm cannot always, nor necessarily, determine what the just wage ought to be. For (a) it not rarely happens that workers who accept such and such a stipend are not truly free; for since they cannot labor fruitfully without machines, which are in the hands of owners, and besides need daily labor for earning daily bread, they are often compelled to accept conditions imposed on them, unless they wish to waste away with hunger.[1] Today, indeed, associated workers, by joining their powers together, can more easily obtain a fair wage; but those associated are fewer than the others; indeed, in certain arts, especially where workers are compelled to labor separately in their own rooms (which is especially true of women), any association is morally impossible: in which case solitary and defenseless persons are handed over to the unbridled competition of competitors.[2] - Now in these circumstances, the price which the master offers and the worker accepts cannot be held as just; Leo XIII declares this thus: "But if the worker, compelled by necessity, or moved by fear of a worse evil, accepts a harder condition, which, even if he does not wish it, must be accepted, because it is imposed by the master or contractor of works, this indeed is to undergo force, against which justice cries out."

[1] For generally there are so many workers that certain persons hired by no one are ready to labor for a lower price: "In ordinary times, the mass of offers of labor sensibly exceeds the mass of demands, and the statistics of all industrial countries attest that the number of workers in forced unemployment ordinarily exceeds 5 percent, which means that, out of twenty workers, only nineteen succeed in finding employment." (P. Bureau, op. cit., p. 122.)

[2] From this has arisen the system which they call the sweating system, which is described in the works cited above, n. 811.

(b) Even if workers freely yielded from their right, and accepted a wage which does not suffice for honorable support, a pact of this kind would not be fair, because they cannot validly renounce those things which are necessary for living honorably; concerning this let the same Pontiff be heard: "Let it be, therefore, that the worker and the master freely consent to the same agreement, and specifically to the measure of the wage: nevertheless there is always something underlying from natural justice, and this greater and older than the free will of those making the pact, namely that the wage ought not be unequal for nourishing a worker, frugal indeed and well behaved."

815. (B) The system of the socialists. Socialists on the contrary contend that from justice the whole fruit of labor is owed to workers, with only those expenses deducted which arise from the price

of materials, the use of instruments, and the intellectual labor of those who preside over the production of things; but this, they say, must not be esteemed more highly than manual work. But that the matter is not so, they say, is established by daily experience; for masters retain for themselves the greater part of the profit, under the pretext of receiving interest for money, or a reward for the peril of the lot; and thus workers are unjustly deprived of the greater part of the fruits, and, by force of the iron law (*loi d'airain*), slip into misery, scarcely having foods necessary for their own support. They wish, therefore, that workers be held as cooperators, and obtain a part of the profit proportionate to their labor.[1]

[1] Vandervelde sets forth their doctrine and arguments, *Le Collectivisme*, p. 123-140; 192-205.

816. This system indeed is nothing other than a conclusion inferred from the principles of Marx set forth above, n. 61-62; for, if all capital is stolen, certainly nothing is owed to it in the partition of profit. - But if capital has been legitimately acquired, a part of the profit must be assigned to it. For (a) capital, which furnishes machines and materials to the worker, and pays him a wage before the thing made is sold, certainly contributes much to the production of goods, and therefore cannot, without injustice, be deprived of a proportionate part of the advantage. Besides, if the rich man obtains nothing from his wealth employed in industry and commerce, who will ever build workshops, and give labor to producing new things? Will it not be safer and more pleasant to enjoy acquired goods quietly, than to take upon oneself all the cares and labors which the management of an industrial matter requires, without any hope of profit? In business, advantage is sought, and if none or almost none is expected, no one will build workshops, and workers will lack instruments and wealth necessary for laboring.

(b) Moreover capitalists take upon themselves the peril of the lot, and in reality not a few obtain an unhappy outcome in business, and not rarely lose the greatest part of the money committed to undertakings.[2] Now where the peril of the lot is present, it is necessary that greater profit be received; for who will expose himself to this danger unless he expects great advantage from it?

[2] "Experience proves that out of ten entrepreneurs of industry or commerce, there are two or three who fall into bankruptcy or insolvency, five to six who find only the means of living by having a modest remuneration for their labor and by preserving their possessions or increasing them only very slightly, and at most one or two who make a fortune of some importance." (P. Leroy-Beaulieu, *Traite*, t. II, p. 207.)

(c) Nor is it permitted to esteem lightly the intellectual work furnished by capitalists, nor the skill acquired by assiduous labor and many expenses; for experience establishes that the happy or unhappy outcome of undertakings depends chiefly on the skill and activity of those who preside over industrial matters: for in the same region, with the same wealth, and the same wage paid to workers, some prosperously succeed, others slip into ruin, according as they manage their affairs well or badly;[1] - and this is also confirmed by the example of cooperative societies: for not a few, notwithstanding the subsidies which they received, had an unhappy outcome, because the workers who presided over them lacked skill and activity.[2]

[1] "These figures demonstrate that the profit of the entrepreneur cannot have an automatic origin, like that which the socialists attribute to it, that it has a purely personal cause, holding to the very faculties of the person." (P. Leroy-Beaulieu, l. c., p. 208.) - The same author shows how much utility inventors bring to workers and society, t. I, pp. 569, 685, t. II, p. 198-199.

[2] On these societies see P. Leroy-Beaulieu, t. II, p. 623-643; Schloss, *Methods of Industrial Remuneration*, London, 1898; rendered in French by C. Riss, *Les Modes de Remuneration du Travail*, Paris, 1902, p. 279-315.

From these things it is permitted to infer that not an equal, but a proportionate, part of the profit belongs to masters and workers.

817. (C) Catholic doctrine. Between these two extremes the Catholic doctrine which Leo XIII set forth in the Encyclical *Rerum Novarum* proceeds by a middle way. There he especially declares two things: (a) "that the wage ought not be unequal for nourishing a worker, frugal indeed and well behaved," and indeed from justice, as we explained above, n. 814; (b) that it is to be desired that the wage be sufficiently ample for the honorable support not only of the worker himself, but also of wife and children: "If the worker receives a wage sufficiently ample that by it he can conveniently protect himself, his wife, and his children, he will easily study thrift, if he is wise, and will bring it about, as nature herself seems to admonish, that, expenses having been deducted, something also remains, by which it may be permitted to him to arrive at a modest property... Wherefore laws must favor this right, and, insofar as possible, provide that as many as possible from the multitude prefer to have property." He afterward describes the utility of this manner of acting, namely a more equitable partition of goods, greater eagerness for laboring, and also the diminution of emigration to foreign nations.

818. From this, however, controversies arose among Catholics, some saying that from this declaration of the Pontiff a family wage is owed from justice, but others asserting that it is fittingly given only from charity, as often as the condition of industrial affairs permits this. Wherefore three doubts were proposed to the Holy See by Cardinal Goossens, to which Card. Zigliara, by order of the Holy Pontiff, responded. Now from this response three things are likewise established: (a) that from commutative justice there is owed to a worker, otherwise capable and laboring well, of itself, a wage which suffices for suitable food and clothing, not indeed to be determined punctually and mathematically, but from common estimation, with attention to the quality, quantity, and duration of the work, and also to the price of things which must be bought by the worker for suitable food and clothing in such and such a region;[1] (b) that a master who pays a wage sufficient for the support of the worker, but unequal to the feeding of his family, indeed does not sin against justice, whose demands are fully satisfied when equality of wage and work is observed; - but sometimes can sin against charity, which demands that the master prefer his workers in lavishing alms; or against natural honesty, insofar as the master, who receives great benefit and advantage from the work of the worker, is in some way held from a certain natural equity to recompense this by supererogation; (c) that, speaking of itself, masters sin against commutative justice who, "using no force or fraud, give less wage than the work furnished deserves and than suffices for honorable support, for this reason that several workers offer themselves, who are content with that small stipend, or freely consent to it"; he says, speaking of itself; for "accidentally particular cases can be given in which masters can hire workers content with an inadequate wage: for example, if the master would draw either no advantage, or one altogether insufficient for the suitable support of his own life, if he lavished an adequate wage, indeed, if he would even suffer damage thereby"; this indeed can happen when, because of an industrial crisis, manufacturers are compelled to sell merchandise at the lowest price.

[1] "Therefore as often as the work is such that the worker through himself satisfies the aforesaid natural office of obtaining the immediate end of his labor, and the wage is unequal for obtaining this end, namely suitable food and clothing, speaking of itself and considering the nature of things, there is an objective inequality between work and wage, and therefore a wound of commutative justice. - Yet two things are generally to be considered in this matter: one is that, just as the price of saleable things is not punctually determined by the law of nature, but rather consists in common estimation, so also this must generally be said concerning wage;... the other is that in assigning the equality of justice between wage and manual work, common estimation attends not only to the quality and quantity of the work, but also to the time of its duration, likewise to the prices of things which must be bought by the worker for suitable food and clothing; which prices are not the same everywhere." (Card. Zigliara, Letter to Card. Goossens, 1891.)

Yet this letter did not impose an end to the dispute; for Father Eschbach, superior of the French seminary in Rome, contended that, according to the style of the school and of the Roman Rota, under the name of sustenance come all foods, clothing, habitation, medicines, etc., with attention to the quality of the one to be sustained; wherefore, if the one to be sustained is married, he has a right to honorable support for himself, wife, and children.[1] - But on the contrary Bishop Turinaz, bishop of Nancy, responded that the labor of the worker is a personal work, and not of the family, nor does it have anything except a secondary and accidental relation with the family, and therefore from justice merits nothing except personal support.[2]

[1] Eschbach, letter of Aug. 19, 1893 and Jan. 24, 1895.

[2] Turinaz, *Le salaire familial et le Card. Zigliara*, Nancy, 1895, where the two letters of Father Eschbach are also found.

819. (D) Practical conclusions. (a) In every case, masters are held from justice to pay a wage which corresponds to the economic value of the work furnished, according to the common estimation of prudent persons, that is, of masters and workers who can bring a fair judgment concerning this matter.

This rule indeed flows from the general principle admitted for all contracts, namely that equality is required between the work furnished and the price paid, according to the common estimation of skilled and honest persons.

But we said that account must be had of the estimation of masters and workers, and not only of one order; for since the matter concerns a thing which pertains to each order, and besides each naturally seeks its own proper good, it is not fair to stand by the judgment of one rather than the other; but skilled and honest persons of each order must come together so that, all things carefully weighed, the just price can be determined. This in practice is done through mixed councils composed of masters and workers (*Conseils des prud'hommes*, *Conseils d'usine*).

820. Corollaries. 1. Accordingly it is permitted to stand by the current price which is in force in a region, unless there is moral certainty that it has been determined by an unjust conspiracy.

2. That price cannot be the same in all regions or times, but must be increased or diminished according to the greater or lesser prosperity of industrial affairs: thus, if from various circumstances profit is increased, that increase must be divided between masters and workers in fair proportion, and not accrue to masters alone, especially since it can rightly be attributed to the efforts of each; but on the contrary, if profit is diminished, it is fair that the wage be proportionately less, lest otherwise masters slip into ruin, not without detriment to workers.

3. Masters would act unjustly who, abusing the ignorance or necessity of some worker, furnished to him a wage below the current price, e.g., gave only three coins for work which, according to common estimation, is worth four coins.

821. (b) In the normal state of industry and commerce, from justice there is owed at least that wage which is necessary to the worker himself for his honorable support, provided he labors with common and ordinary skill and activity.

Leo XIII expressly declared this, above, n. 817; and rightly. For the right and office of protecting their own life is incumbent upon workers; but, from things commonly happening, they have nothing else from which they may live except the wage received for labor; therefore they have the right and office of demanding the payment necessary for decent support; otherwise it would have to be said that a worker fit for laboring, and besides laboring with common diligence, cannot provide for himself even in ordinary circumstances without asking alms; this indeed no one of sound mind will say; for if it pertains to charity to relieve the poor and to furnish help to workers in certain extraordinary cases, it certainly pertains to justice to provide for the ordinary necessities of workers, by furnishing to them a sufficient wage; otherwise, it is all over with their dignity, and they must be numbered among beggars.

Now under the name of honorable support are rightly enumerated: foods necessary for repairing strength, clothing suitable to one's state, a healthy dwelling, - those things which are required for observing feast days and indulging some honorable and necessary recreation, and for meeting the customary cases of sicknesses and dangers, and also for preparing for oneself a tranquil old age; for all these things, according to common estimation, must be called morally necessary. - But if extraordinary misfortunes occur, long-lasting diseases, strength broken before the customary time, etc., it is not necessary that the wage suffice for relieving all these things, but recourse must be had to charity, unless the worker has provided for fortuitous cases by insurance.

822. It was said "in the normal state of industry," because if the conditions of things are such that, for some time, owners cannot pay so great a wage unless they fall from their own state, the stipend can be diminished, and it is fair that workers and masters suffer something until the abundance of fruits permits a return to the former wage; nevertheless, it is expedient that this be done by common counsel, by which lawsuits and dissensions may more easily be removed.

Likewise, if some worker, because of old age or weak health, or lack of common skill, cannot furnish integral labor, the master is held from justice only to compensate the work furnished. The same can be said if out of mercy alone he has hired a worker whose work he did not need.

823. (c) In the normal state of industry, the wage furnished to a suitable worker ought to be such that, increased by the wage which wife and children gain by labor proportionate to their powers, it suffices for the honorable support of the family; and this indeed from commutative justice according to many, from legal and distributive justice according to several, but from charity and equity according to others.

It is declared. So that this may be better understood, it must be declared in a few words. Here the matter does not concern a relative family wage, by which namely the wage ought to be increased

proportionately to the number of children; nor is it contended that more is owed to married men and fathers of families than to those who remain celibate; for if the matter were so, married men would scarcely find masters who wished to hire them, and thus they would often be compelled to be free from all work, with great detriment to themselves and their family.

But the matter concerns a collective family wage; namely, such a stipend must be furnished to any worker that, when he marries and is made the head of a family, he can support his family, provided however that the wife takes up that kind of work which can stand with her offices, and likewise the children, at an opportune time, begin to labor in a manner proportionate to their powers. It is likewise supposed that the number of children is ordinary; but if the offspring is very numerous, the social good demands that either the Republic or private societies furnish some help to this family; for since numerous offspring well educated contributes greatly to the good of the whole society, it is fair that society itself contribute something to the education of this offspring; nor from justice is the master held to increase the wage of those who have many children, although from charity he can be held to give something, according to the things said above, n. 803-805.

We also suppose that the condition of industry is prosperous, so that the owner, by paying such a wage, not only does not incur danger of ruin, but he himself can make a proportionate profit; for he is not held to suffer some damage so that he may provide for the necessities of workers; but he satisfies justice by furnishing payment equal to the value of the work furnished.

824. It is proved. These things being posited, one can argue thus. The common law of nature is that workers, like other men, enter marriage, and, insofar as they are fathers of families, perform their offices toward wife and children; but one of these primary offices is to provide for the necessities of the wife, when she, because of the duties of mother which are incumbent upon her, cannot provide for herself, and also to feed and educate the offspring whom he has begotten: "It is a most holy law of nature," says Leo XIII, "that the father of a family protect with sustenance and every cultivation those whom he himself has begotten: and this likewise is deduced from nature itself, that he wishes to acquire and prepare for his children, who refer back and in some way produce the paternal person, that by which they may honestly defend themselves from miserable fortune in the uncertain course of life."

Whence thus: in the normal state of industry, a suitable worker ought to have an efficacious means of providing for an ordinary family. But such a means cannot be except labor in which there is a value equivalent to an absolute and collective family wage. - Therefore there is in the labor of the worker a value equivalent to an absolute and collective family wage.

825. From this it follows, according to many, that this wage is owed from justice, as often as the condition of industry permits it;[1] for otherwise the right which workers have of furnishing necessities to their family would be violated. Nor does this opinion, understood thus, contradict the opinion of Cardinal Zigliara; for he was speaking of a father of a family who alone was working for the support of the whole family, while in our case it is supposed that other members of the family contribute something to the domestic matter by some labor proportionate to their powers. In other words, the family itself can be regarded as a moral body, which has a right to honorable support when it labors according to its powers.

[1] Thus Card. Manning, *La Question ouvriere et sociale*, Paris, 1892; Liberatore, *Econ. Polit.*, p. 246-252; Nicotra, *Le minimum de salaire*, art. 2; Verhaegen, *Le minimum de salaire*, Ghent, 1892; C. Perin, *Note sur le juste salaire*, Mons, 1892; Pottier, op. cit., n. 195; Gayraud, *Questions du jour*, Paris, 1897, p. 171-176; Waffelaert, in *Collationes Brugenses*, VI, Jan. 1901; Vermeersch, op. cit., n. 430-440; Lehmk., n. 1127a; Noldin, n. 600-601.

826. Yet we do not deny that there are certain persons, among modern Catholics, who still contend that from justice only the payment necessary for personal support is owed; for, they say, the work furnished is something personal, and has no relation to the family; whence the family wage, in whatever way it is understood, is not owed except from a certain charity or equity; if the wife labors, she indeed will receive from justice payment proportionate to her labor; the same must be said concerning children; but if the collective wage does not suffice for the support of the whole family, this cannot be turned into a fault for masters, who furnished a stipend corresponding to the value of the work. - To these it is responded that there is in the labor of workers, although merely personal, an intrinsic value sufficient that from it provision can be made for the family in ordinary circumstances.

Several, on the contrary, have recourse only to legal and distributive justice. For the common good demands that workers be able to marry and provide for a family, and it cannot be admitted that the support of families is to be expected from charity alone. Hence patrons are held from legal justice to furnish an absolute family wage, and presidents of the state from distributive justice to favor families, especially numerous ones.

Whatever may be the case concerning the speculative question, now a few things must be said concerning practical means by which, gradually and without harm to anyone, the wages of workers can be increased.

2. On The Means By Which The Wage Can Be Increased.

827. (A) Preliminary notions. (a) Most socialists and defenders of seditious syndicalism contend that the wage system is in itself and essentially unjust, and therefore must be abolished rather than amended.

We indeed do not deny that there have been several abuses in this regime, and before the great war wages in many regions were altogether insufficient, especially in those regions in which there were few workers' associations, but chiefly as regards women who labored at home by making clothing for great workshops,[1] so that it was necessary for laws to be made for determining the minimum wage to be paid to them. But from this it by no means follows that the regime itself of patronage, as intrinsically evil, must be abolished, but that means must be sought by which, by a wise and progressive evolution rather than by a violent overturning of things, the wages of workers can reasonably be increased.

[1] *Enquete sur la petite industrie* (*Office du Travail*) t. II, *Le vetement a Paris*; Ch. Benoist, *Les ouvrieres de l'aiguille a Paris*, 1895; d'Haussonville, *Salaires et miseres des femmes*; Bonnevay, *Les ouvrieres lyonnaises travaillant a domicile*, 1896; for England: *Final Report of the Committee of the House of the Lords on the Sweating System*, 1890; for America: *Report of the Committee on the Sweating System*, 1893, and more briefly in Levasseur, *L'Ouvrier Americain*, t. I, p. 422-451.

(b) In any region, other things being equal, the wage is greater for men than for women, especially because the stipend paid to women is held as a complement of the wage furnished to the husband; in

great cities than in small ones, where expenses are less.

828. (c) In reality, from the common counsel of masters and workers, wages gradually increase; thus, in the second part of the recently elapsed century, they were increased by about fifty percent, while the expenses necessary for honorable support grew only twenty-five percent.[1] Today, after the war has ended, they have indeed increased much, so that they suffice for the honorable support of workers who are either celibate, or have children already capable of earning something. Nevertheless, because of the diminished value of money and the increased price of things, parents who have numerous offspring still incapable of laboring can support them only with difficulty. Wherefore, in some regions, owners have instituted a common fund from which they pay an additional wage (*sursalaire*) to workers according to the proportional number of children; this is certainly altogether consonant with equity.[2]

[1] Souchon, *La situation des ouvriers en France au XIXe s.*, in the periodical *Le Musee social*, August 1899; E. Cauderlier, *L'Evolution economique du XIXe siecle*, Brussels and Paris, 1903, p. 73-201.

[2] Max Turmann, *Problemes sociaux du travail industriel*, Paris, Gabalda, 1921, ch. III; P. Bureau, *La Caisse de compensation du Syndicat des metallurgistes dauphinois*, 1919; Antoine du Passage, *Economie Sociale*, p. 685, where it is read: "Additional wages are becoming... more and more habitual. In Dauphine, in the North, in Normandy... they already constitute true institutions. At first some Dauphine patrons (it is in this region that the first trials were attempted) gave to a family comprising one or several children an additional payment. Then, to establish the measure on a broader base and proscribe every inclination to favor celibates to the detriment of fathers of families more burdensome for the enterprise, the associated patrons founded a regional Compensation Fund. Each enterprise pays into this fund a fixed sum per worker employed (married or not), and it is then the fund which distributes the additional wages among all the families, in the factories thus associated, proportionately to the number of children. - At the Social Week of Caen (August 1920), M. Deslandres noted that the existing compensation funds were already paying additional wages for several million francs each year, and showed that the institution, whose importance grows each day, has a true social scope."

829. (B) The principal means which have been devised for increasing wages. Here the matter concerns only those means which refer more directly to the wage itself, since later we shall speak of others which can render the general condition of workers better. The principal means are five: -

(a) Certain premiums granted to those workers who labor better, namely who diligently begin the work at the appointed time, or remain longer in the same workshop, or within the same space of time make more things, or make them more perfectly, or also use materials more sparingly; for in these cases a greater profit accrues to the master, who therefore is able to pay a greater stipend without any loss. - To this manner of acting many Socialists are indeed opposed, because it is opposed to perfect equality, and besides exhausts the strength of the workers, and chiefly favors the masters, who usually do not grant a premium proportioned to the more intense labor. Yet that system, notwithstanding certain inconveniences, greatly profits both masters and workers, provided it is brought into practice wisely and honestly, namely by taking care that workers not be drawn out too long in excessively arduous labors, and at the same time by seeing to it that they receive a premium equal to their efforts, according to the estimation of prudent persons.[1]

[1] On the various ways of paying premiums (*primes a la production, a l'assiduite, a l'economie, a l'anciennete*, etc.), Schloss, op. cit., p. 11-134; Vantaer, *La Participation aux benefices*, Paris, 1898, p. 25-46; P. Bureau, *L'Association de l'ouvrier au profit du*

patron et la Participation aux benefices, Paris, 1898; Gilman, *Profit Sharing*, London and New York, 1892, ch. II, p. 44-58, wrote wisely.

Sometimes wages also are increased or diminished according to a sliding scale (*echelle mobile*, sliding scale), corresponding to the quantity and price of the thing sold; this is done especially in England and America.[2]

[2] Vanlaer, op. cit., p. 33-36; Bureau, op. cit., p. 90-99; Gilman, op. cit., p. 56-58.

830. (b) A certain participation in profits, by virtue of which workers, besides the daily and usual stipend, each year or half-year receive a proportional part of the profits which the master has made. For even if he who has taken upon himself the whole risk of the business is not held to divide the profit with the workers, nevertheless it is fair that, after setting aside some part of the profit for protecting himself against adverse events, he distribute another part between himself and the workers; since they have had a part in the production of the things, it is not fitting that they be altogether excluded from the profits, especially if these are immense, and if besides they suffer a diminution of wage when things do not succeed so prosperously. - In this way production also is increased not a little, at least in many cases: namely, when workers expect some premium above the usual wage, they are accustomed to labor more intensely. - By this manner of acting, likewise, relations between masters and workers are made more friendly and peaceful, since in this way they understand better that they are co-workers.[1]

[1] These advantages may be seen set forth at length in Vanlaer, p. 161-190.

In reality, already from the year 1842, participation of this sort in profits was in use among various Nations,[2] and, although it did not always and everywhere have a happy outcome, it profited much especially in workshops in which there are fewer workers, who can be stirred up by mutual example to labor better. Today it is judged that this participation can be made through the distribution of labor shares (*actionnariat ouvrier*, *actions de travail*), concerning which cf. Supplement, p. 236.

[2] Cf. Vanlaer, p. 47-81; 277-302, where you will find enumerated the workshops in which this participation flourishes; Gilman, p. 66-411.

831. (c) Subsidies granted to workers (*subventions patronales*); that is, certain masters divide some part of the profit under the form of subsidies, insofar as from superfluous things they contribute something to various institutes created for aiding workers: for increasing insurances against fortuitous cases, involuntary cessation from work, diseases, old age, or premature incapacity for laboring, - for fostering schools in which professional instruction is given, - for obtaining healthy houses at a moderate price, - for instituting cooperative societies, or other societies entered into for the sake of honest recreation, - for aiding in a special way families burdened with numerous offspring, etc. - These indeed will profit greatly, if masters permit the workers themselves to manage these funds or these societies, or at least to have a part in their management; otherwise they soon conceive a sense of distrust against institutes of this sort, and prefer to suffer everything rather than have recourse to societies which are managed by masters alone, and, as they think, for their advantage.

832. (d) The moderate intervention of the Republic, not indeed in this sense, that by public authority the wages to be paid to workers can be defined in a general and universal manner;

but by giving an example, namely insofar as the State, Province, or Municipality, when they hire workers, pay a proportional wage fully suitable for their decent support, or impose upon executors of public works a proportional minimum wage to be paid to workers; and by taking care in a general way that wages in such a city or province be defined by mixed councils, in which delegates from masters and workers, by common vote, weigh the matter fairly, the reasons on both sides being honestly set forth.

(e) Associations of workers, by which they, with united forces, can obtain all that masters can grant without loss; concerning these associations we must now speak a little more fully.

III. On Workers' Associations (*syndicats professionnels*).

833. 1. State of the question. (A) Among the means by which the condition of workers can be rendered more tolerable and secure, Leo XIII enumerates associations of craftsmen, whose utility in past centuries he thus describes: "That associations of craftsmen among our forefathers long consisted in good deeds is certain. In truth they produced not only distinguished advantages for craftsmen, but also honor and increase for the crafts themselves, as very many monuments testify."[1] In most regions, however, already from the seventeenth century, associations of this sort began to decline, and afterward they were abolished, with the right of association forbidden. Yet some survived secretly; others were instituted under one or another pretext, until at last the liberty of association was restored.

[1] The history and advantages of these associations have been described by E. Levasseur, *Histoire des Classes Ouvrieres avant 1789*; Martin Saint-Leon, *Les Corporations de metiers*; Hubert-Valleroux, *Les Corporations d'Arts et Metiers*; Blanc, *Les Corporations de Metiers*; more briefly, however, by L. Garriguet, *L'Association ouvriere*, 1904. - Their present state is set forth: for France, L. de Seilhac, *Syndicats ouvriers, Federations, Bourses de Travail*, Paris, 1902; for England, P. de Rousiers, *Le Trade-Unionisme en Angleterre*, Paris, 1904; for America, L. Vigoureux, *La concentration des forces ouvrieres dans l'Amerique du Nord*, Paris, 1899; R. Ely, *The Labor Movement in America*, New York, 1886; in Belgium, Vandervelde, *Enquete sur les associations professionnelles d'artisans et d'ouvriers en Belgique*, 1892; for Germany, Brandts, *Les associations ouvrieres en Allemagne*, 1899, etc.

(B) The same Pontiff inculcates the necessity of associations of this sort, accommodated to our morals: "In a more instructed age now, with new morals, and with the things which daily life requires having also increased, it is certainly necessary that workers' sodalities be adapted to present use." Indeed we have already demonstrated above, n. 185, the utility and the moral necessity of association; for man, having discovered the scantiness of his own powers, by natural inclination seeks to enter societies with others, so that by common counsel and action he may increase and multiply his powers.[1] And if this is true of all citizens, it must be said with greater right of workers, who otherwise would be handed over solitary and defenseless to unbridled competition; for since as individuals they are much less powerful than masters, they cannot efficaciously vindicate their rights unless by uniting counsels and forces.

[1] To the point Leo XIII (*Rerum Novarum*): "The explored scantiness of his powers impels man and urges him to wish to join foreign help to himself. That saying belongs to the sacred writings: It is better therefore that two be together than one: for they have the benefit of their society. If one falls, he will be supported by the other. Woe to him who is alone: because when he falls, he does not have one lifting him up (Eccles., IV, 9-10). And also this: A brother who is helped by

a brother is like a strong city (Prov., XVIII, 19). By this natural inclination, just as man is led to civil union and congregation, so also he seeks to enter other societies with citizens, small indeed and imperfect, but societies nevertheless."

834. 2. On the relative utility of mixed and independent associations. Here, however, a question arises: what kind of associations is better, whether mixed sodalities (*syndicats mixtes*), composed of workers and masters, or separated sodalities, composed of workers alone or of masters alone. Leo XIII approves each kind: "That societies of this kind are commonly formed, whether composed wholly of workers, or mixed from each order, is pleasing: but it is to be desired that they grow in number and active virtue." Yet among Catholics, some favor mixed associations, others separated ones.

835. (A) Those who favor the former kind argue thus:[2] (a) mixed sodalities promote mutual confidence and concord between workers and masters. For associations composed of workers alone are as it were armies armed against masters; on each side perpetual distrust flourishes, and often between the two orders discord breaks out without just motive. For composing disputes no principles are admitted except the principles of strict justice and absolute equality, nor any means except agreements which now are extorted from masters, now from workers, by threats or fear. Hence that regime can be called a regime of separation, mutual distrust, and justice alone, under threats of violent dissension or under an armed treaty of peace. - On the contrary, in mixed associations the hierarchical order in those things which regard the direction of labor is indeed acknowledged, but at the same time equality between masters and workers as regards the contract of labor itself; the various difficulties which arise are solved by confidential recourse to the masters, through a council composed in equal number of delegates from each order (*conseil d'usine*); wherefore that regime can be called a regime of union, mutual confidence, and benevolence.

[2] Castelein, *Instit. Philos. Moralis et Socialis*, p. 400-403; id., *Le Socialisme et le droit de propriete*, p. 289-304.

836. (b) From this benevolent and mutual concord of masters and workers there arises industrial prosperity, which profits society no less than each order; for the common labor becomes more intense, and is better ordered to the same end, and therefore more and more perfect things are produced, and the profit of the master as well as the wage of the worker can be increased. Thus also the burdens of those laboring are diminished: for the master who truly loves his workers and is loved by them is more inclined to favor them and to furnish assistance to them; for equity tempered by charity profits more than justice alone.

(c) From this there is instituted a stronger struggle against socialism; for since socialists have nothing more ancient than to scatter dissensions between masters and workers, in order more efficaciously to overturn the social order, nothing stronger can be opposed to this manner of acting than the mutual benevolence and confidence of each order: for thus many dissensions are forestalled, and, if any arise, they are composed not by sedition and violence, but by conciliation and arbitration.

837. (B) Those who favor separated associations do not indeed deny these utilities speculatively; but they observe these things: - (a) For several years Catholics in various regions, with the greatest liberality, have tried with all their strength to institute mixed sodalities, yet with an

unhappy outcome. Thus today, in France, while in the year 1900 there were only 29,044 workers and masters in mixed associations, 170,030 masters and 588,832 workers adhered to separated industrial associations.[1] The reason is that workers, in mind and character, education, and manner of living, are so distant from masters that they often shrink from meeting and conversing together; for workers wish to be independent, at least during the hours in which they do not labor, conscious of their own dignity, tenacious of their rights, desirous of justice rather than charity, most diligent guardians of solidarity; masters, however, zealous assertors of their own authority and dignity, often ambitious and desirous of acquiring riches quickly, wish to manage their own affairs alone, without any intervention of the State or of workers.[1] Wherefore it is very difficult to join masters and workers together in one and the same association.

[1] In P. Pic, op. cit., n. 552; from that time separated associations have grown much, as can be read in the periodical *Bulletin de l'Office du Travail*.

[1] For a fuller understanding of the matter, cf. J. Huret, *Enquete sur la Question sociale en Europe*, Paris, 1897; G. Routier, *La Question sociale et l'opinion du pays*, Paris, 1894; G. Lebon, *Psychologie du Socialisme*, Paris, 1902, p. 44-56; 317-323; 332-342; 414-418.

838. (b) Moreover, by separated associations the blind force of unbridled competition is more efficaciously broken; on the one side, namely, associated workers by common counsel and action seek a wage sufficient for themselves and their family, and on the other, associated masters weigh at what price they must sell the things made, so that, without their own loss, they may be able to satisfy the legitimate petitions of the workers. But since difficulties and dissensions often arise, councils of deputies are called, elected from each order, and thus, after an honest and sincere exposition and discussion of the matters, the dispute is amicably composed.

It is objected indeed that separated workers' associations are nothing other than legions armed against masters, always ready for rebellion, and slipping more or less into socialism. - That the matter is so in France and in certain parts of Germany is established with sufficient certainty from many facts.

Resp. We indeed concede that workers' associations, when first instituted, and especially where the best of the workers are deterred from entering them, often foster a certain spirit of rebellion, and more or less embrace the doctrines of socialists; from this arise dissensions, concerted cessations from work, and very many acts of violence. But in the course of time, by experience and by the study of social matters, the leaders of the associations gradually understand that nothing can be obtained by violence and sedition, since the ruin of workshops harms workers no less than masters; wherefore, after various attempts, they begin to be wise and to consider things with a sounder mind, and they strive to make their condition better by legitimate means. Thus especially in Great Britain[2] and in the Federated States of America;[3] and therefore it can be expected that, after some time, things will so stand in France, especially if honest and well-moraled workers institute independent associations, and vindicate their rights no less strenuously, but more legitimately than the socialists.[1]

[2] Sydney and Beatrice Webb, *The History of Trade Unionism*, London, 1894; G. Howell, *Trade Unionism New and Old*, London, 1894; F. Fagnot, *Le Syndicalisme anglais*, Paris, 1903; de Rousiers, op. cit.

[3] R. T. Ely, *The Labor Movement in America*, New York, 1886; G. E. N. Neill, *The Labor Movement*, 1887; Levasseur, op. cit., t. I, p. 237-305. - Recently, in the 23rd Congress of the American Federation of Labor, held at Boston (Nov. 1903), President Gompers openly declared that the doctrines of the socialists lacked a solid foundation, indeed were erroneous and impossible in practice. (*Report of the Proceedings*, Washington, 1903; *Bulletin de l'Office du Travail*, March 1904, p. 240.)

[1] In reality the associations of typographers, which are older, exhibit greater prudence, as may be seen in L. de Seilhac, p. 121-125.

839. (c) By these associations well ordered, the education of workers is promoted, insofar as they, more and more conscious of their own dignity, strive to become more skilled in their art, purer and more temperate in their morals, and more capable in managing affairs; thus, for example, by force of the statutes in force in certain associations, drunkards, blasphemers, the lustful, in one word all those who offend honesty or good morals, are excluded.[2] - Moreover, when associated workers are Catholics, by good examples and exhortatory words they mutually stir one another up to cultivating virtue and religion, and not rarely bring others to religious practice by persuasion and by a benign manner of acting.

[2] You have examples, for America, in Ely, op. cit., p. 120-160; for England, in P. Bureau, *Le Contrat de Travail*, p. 227-228, where these words of one of the leaders of the workers are reported: "Do you believe that if we struggle with the ardor which you know..., it is only to make you gain three or four pence more per day? What would that serve if you continue to bet at the races, and to get drunk in the public houses? A fine result of our efforts indeed! No, my friends, know this well, what we wish, what we must obtain, is that you rise to a better life, to a life more conformable to the dignity of the human species."

840. (d) Thus also the way is prepared for the collective contract of labor, which, rightly understood, profits masters equally and workers; for in great workshops, it becomes morally impossible that masters enter a contract of labor with individual workers; besides, so that the agreement may be fair, and may not furnish occasion for many dissensions, the conditions as to the quantity or quality of the work, and also the determination of the price, must be defined minutely. Now for defining all these things justly, nothing is more expedient than a convention of delegates, who officially act for the parts of masters and workers: this indeed is easily furnished if there are separated associations of masters and workers; for then deputies are freely elected by the workers themselves, who defend their rights, and for that reason the conditions signed by the deputies are more easily ratified and fulfilled.[1]

[1] Raynaud, *Le Contrat collectif de travail*, Paris, 1901; P. Bureau, *Le Contrat de travail*, p. 183-271; P. Pic, op. cit., n. 442-444.

841. (C) Conclusion. Since reasons not to be despised are brought forward on each side, each person can favor either kind of association, as he pleases.

(a) In small workshops, where masters and workers can more easily meet and friendly relations be had, mixed associations can usefully be instituted;[2] yet masters should take care that workers may freely open their mind and set forth what changes please or displease them; likewise let it be free to them by their own movement to institute and manage various societies, lest otherwise they seem to depend altogether upon the masters, and afterward, conscious of this dependence, incline to open rebellion.[3]

[2] Thus in the place called Val-des-Bois, wholly friendly relations flourish between L. Harmel, who is called a good father, and his workers; cf. L. Harmel, *Manuel de la Corporation chretienne*, Tours, 1879, p. 23-38; 213-255; U. Guerin,

Fileur en peigne du Val-des-Bois (Collection *Les Ouvriers des Deux Mondes*), 2nd series, 38th fasc., 1896, p. 73-136.

[3] You have an example of this matter in *La Quinzaine*, April 1, 1902, p. 350-375, *Montceau-les-Mines et le Paternalisme*, by P. Bureau.

842. (b) But in great workshops, with attention to the psychological dispositions, so diverse, of workers and masters, and also to the experiments made in various regions, the institution and lasting preservation of mixed associations often becomes morally impossible. Hence today, among most Nations, whether Catholic or non-Catholic, separated associations flourish, which nevertheless strive to preserve peace and concord by a mixed Council of conciliation and arbitration. Yet it must be diligently cared for that associations of this sort, political-party prejudices being set aside, do not foster the spirit of sedition, but rather promote by legitimate means the professional, physical, intellectual, moral, and religious good of the workers. Therefore from these associations men upright and honest, attached to the Catholic religion, should not be kept away; where the errors of the socialists have already invaded workers' associations, let other independent associations be instituted, to which the upright can join themselves; for the time will come when workers, enticed by socialists, will understand that they have been deceived, and will join themselves to those associations which strive to render the condition of workers better, without however wishing to overturn the whole social and religious order.[1]

[1] "The workers who are refractory to socialist excitations, and who ask only to shake off the yoke of the socialist party, are numerous; we even believe that they are the majority. But abandoned to themselves, what can they do, except bend the back before the most violent and most audacious? They will be able to resist seriously only from the day when to the socialist syndicate there is opposed a syndical organization received by the chiefs of industry with real sympathy." (Delcourt-Haillot, in the periodical *Reforme sociale*, May 16, 1902, p. 767.) - In reality Christian or independent workers' associations have been instituted in Belgium (P. Rutten, *Mouvement syndical chretien en Belgique*, Ghent, 1903; L. Varlez, *Quelques pages d'histoire syndicale belge*, in *Musee social*, March 1902); in Germany (Tondeur-Scheffler, *Les Syndicats ouvriers allemands*, in *Musee social*, April 1902; G. Blondel, *Le Mouvement syndical chretien en Allemagne*, in *La Quinzaine*, January 1, 1902, p. 30-41); in France today 140,000 men and women adhere to the national association of Catholic workers, whose number grows daily, with not a few bishops favoring it, as will be set forth in French at the end of the work.

To the point Leo XIII: "They indeed for the most part understand that they have been deceived by false hope and a feigned appearance of things... With broken spirit, weakened body, how greatly many would wish to vindicate themselves from so base a servitude: and yet they do not dare, whether because human shame, or fear of want, forbids it. Now to all these, how wonderfully Catholic associations can profit unto salvation, if they invite the hesitating to their bosom, with difficulties to be disentangled, and if they receive the penitent into their faith and protection."

843. (c) So that Catholic professional associations may promote private and social good, they must be imbued with a Catholic spirit and tend to the perfection of piety and morals no less than to the increase of goods of body, mind, and family estate. Wherefore priests, who cannot join themselves to workers' associations, in many regions, must see to it that at least some from among the Catholics who enter these associations are so strengthened in faith and instructed in genuine piety that they are able to instruct others by words and examples; for just as a little leaven lifts up the whole mass, so a tiny flock of devout persons will gradually convert the whole multitude of laborers to better things.

Leo XIII illustrates this by the example of the first Christians, of whom most lived by the work of their hands: "It was possible to see them industrious, laborious, peaceful, holding themselves forth as an example of justice and especially of charity; at the spectacle of such life and morals, every prejudged opinion vanished, the detraction of the malevolent fell silent, and the fictions of long-standing superstition gradually yielded to Christian truth." Thus Christian craftsmen, if they join arduous labor to piety, and at the same time show themselves industrious, modest, and benign, will conciliate to themselves the confidence and benevolence of many, and reverence and honor for the Catholic religion.[1]

[1] Certain Catholic societies contribute much to the right and Christian institution of young workers; while they assiduously inculcate the practice of Christian virtues, they teach adolescents how by legitimate means, with the rights of masters unharmed, they can render their condition better. Cf. Max Turmann, *Education populaire*, 2nd ed.

IV. On Cessation From Work (*greve*, strike).[2]

[2] Lehmkuhl, *Arbeitsvertrag und Strike*, Freiburg, Herder, 1895, in French *Le Contrat entre patrons et ouvriers et les greves*; Pottier, op. cit., n. 172-183; Vermeersch, op. cit., n. 470-477; Antoine, op. cit., p. 462-470; Rutten, *Nos greves houilleres et l'action socialiste*; Turquan, *Les Greves*, Paris, 1890; L. de Seilhac, *La Greve de Carmaux*, Paris, 1897; id., *Les Greves*, 1903; Howell, *Conflicts of Capital and Labour*, London, 1890; Levasseur, op. cit., t. I, p. 497-571; W. F. Willoughby, *La Corporation de l'Acier des Etats-Unis et la Greve de ses ouvriers en 1901*, translated from English by J. de Montaignac, in *Musee social*, February 1902.

844. 1. State of the question. (A) When a contract of labor is entered, it is defined explicitly or implicitly how long it ought to endure; this being posited, workers or masters act unjustly who, without grave reason, withdraw from a legitimate convention, and therefore are held to compensate the damage thence inflicted upon the other.[3] - But if the contract was from the beginning, or has become, unjust (which can be judged from the rules set forth above, n. 793-802), those who, on account of the injury which they suffer, withdraw from the contract do not commit an injury. - Once the time has elapsed, workers can cease without injury toward the master, even without any reason: for it is permitted to them either to rest, or to hire out their work to others.[4]

[3] Civil laws generally sanction this; for France, cf. Planiol, n. 1878-1896, where the laws of Dec. 27, 1890, and July 19, 1901, are set forth.

[4] Yet, if they need to labor for the support of themselves and their own, and no hope shines upon them of finding another master by whom they may be hired, from charity and from prudence they can be held not to leave the work.

(B) But the question arises whether workers can cease from work in a body and by agreement, for this end, that they may obtain or extort from masters a greater wage or other conditions. This cessation from work is called by the name strike, and is defined as the common withdrawal by agreement of many workers for obtaining certain advantages from masters. - Often workers desist from laboring in order to obtain a greater recompense, but sometimes also that the labor may be made less long-lasting and less grave, or because certain workers, especially if they are associated, have been dismissed or more harshly treated; sometimes they complain that faith has been violated, or that an unfair stipulation has been attached to the contract. Not rarely, especially in France, they are stirred up by political agitators,[1] who affect love toward the people, so that they may capture their

votes; hence sometimes it happens that most do not know the cause why they have refused to work, and do not know what is to be sought from the masters.

[1] "Assuredly the far greatest part of the workers prefer to obtain better things by honest labor without injury to anyone: yet not a few are numbered who are imbued with depraved opinions and desirous of new things, who strive in every way to move disturbances, and to impel the rest to violence." (*Rerum Novarum*.) - On the various motives on account of which cessation from work occurs, see L. de Seilhac, *Les Greves*, p. 177-229.

845. 2. Principles concerning cessation from work. (A) A common cessation from work by agreement is not permitted except for a grave cause, after mature deliberation, and after useless attempts to settle the dispute peacefully.

(a) For a strike is as it were a war between masters and workers, and brings many evils with it: "That kind of cessation affects with damage not only masters, and the workers themselves, but harms commerce and the utilities of the republic, and since it is not far from violence and disturbances, it very often brings public tranquillity into danger."[2]

[2] *Rerum Novarum*. - Thus, at Marseilles, in the year 1901, workers, by desisting from work, lost about 2,000,000 francs, the city itself 25,000,000 francs per week; in the Federated States of America, while a cessation from work was in force in the coal mines (*houilleres*) of Pennsylvania in the year 1902, masters were losing about 157,500,000 francs. - Cf. L. Seilhac, op. cit., p. 23-32.

In reality, during the whole time in which they desist from work, workers receive no wage, but spend for the support of themselves and their family the money amassed by long thrift; but masters not only make no profit, but often incur burdensome expenses for guarding and repairing their buildings and instruments of labor, and lose the opportunity of selling their merchandise not only for the present, but often also for future time, since not a few buyers are accustomed to have recourse to other manufacturers, and often afterwards retain this custom. Moreover railways, and also certain other workshops which depend on those in which the work has ceased, suffer not slight damages from this; sometimes the industry and commerce of a whole province are involved in tangled difficulties, and the number of the poor in the whole region is greatly increased. - Nor must the evils of the moral order be passed over in silence, namely hatreds which dissociate citizens, corruption of morals which naturally flows from long idleness, blasphemies against religion, violent and unjust acts by which persons or things are attacked, and other things of this sort.

Now it is an unshaken principle of ethics that so many and such great evils cannot be permitted without a grave reason which is truly proportioned to these evils; therefore the good which is expected from the strike must be of the greatest moment, and the hope of obtaining it well founded; and therefore the advantages and disadvantages must be weighed diligently and maturely in all justice and charity. Besides, it is necessary that no gentler and better way be available for attaining the intended end; therefore upright and honest men, delegated by masters and workers, must first come together, so that, insofar as it can be done, the dispute may be composed peacefully by mutual concessions; indeed, it is altogether expedient that, if the delegates cannot consent to one and the same proposal, the matter be left to be judged by arbitrators.

846. (b) But when there is a proportionately grave reason, maturely and long weighed, and the dispute could not be composed peacefully by the aforesaid means, it is permitted to workers to desist from work by agreement, provided they pursue a good end; for the matter concerns an

act indifferent in itself, from which a double effect will follow, and by hypothesis the good effect intended is foreseen to surpass the bad effect; and if such a right, in these circumstances, were denied to workers, they could scarcely protect their rights in another way.[1] - Nor should it be said that that means is altogether inefficacious; for, as even the economists of the liberal school acknowledge, although workers have suffered many damages from strikes, nevertheless they often have obtained greater advantages from them; often also the fear lest a cessation from work prevail induces masters to concede to the workers whatever they can bestow without loss.[1]

[1] Thus Leroy-Beaulieu, *Traite*, t. II, p. 453-454; Lehmk., *Theol. moralis*, t. I (11th ed., n. 1348), where he says: "Before this time (of the elapsed contract), to make a strike will not have been unjust if on the part of the master an open violation of the contract is committed, and he, having been warned, does not wish to desist from inflicting injustice. Indeed in such a case, when the matter concerns protecting a right of great moment, it can happen that it is permitted to exercise, not violence indeed, but a certain moral coercion against other workers... by excluding them from undue goods lest they make the repulse of the injury inefficacious, provided however that these can pursue the common cause with the others without incurring their own damage. Such an unjust violation of contract on the part of the master is an openly unjust depression of the recompense, an unjust denial of festal rest, the continuation of a grave danger against good morals."

[1] "Everything considered, strikes have been rather useful than harmful to the working class. - The permanent gain greatly surpasses the passing losses. - Strikes have chiefly contributed to improving workshop regulations, to reducing the excessive working day, to rendering the manner of payment more loyal, finally to making the worker respected by the patron." (P. Leroy-Beaulieu, *Repartition des richesses*, p. 626; cf. p. 395-407; P. Pic, n. 292-295.)

847. (B) Even when cessation from work is legitimate in itself, violent means must not be used either for deterring others from laboring, or for inflicting damage on masters.

The reason is that it is not permitted to use illegitimate means even for pursuing a good end; now violence is something illegitimate, nor must it be used except for repelling force. Wherefore workers who desist from work cannot by force compel others to do the same, nor strike or wound those who continue to labor. Yet they probably can, when the injustice of the masters is certainly established and redounds to common damage, morally compel other workers, especially those associated with them, by persuasion and just threats (for example, by expelling them from the association), not to labor for these masters until satisfaction has been made for the just complaints;[2] for otherwise the rights of workers often cannot be vindicated.

[2] Thus Lehmk., *Casus* 278, n. 895: "But if the injustice of the masters is clear and redounds to the grave common damage of the workers, it will not be unjust also morally to compel those workers who would wish to continue laboring for that lower recompense, not to do so."

Likewise, positively to inflict damage on masters by burning their houses or goods, or by harming them, is prohibited no less by natural law than by positive law; for there are other means for protecting the rights of workers; indeed experience establishes that by these violent means their cause is ruined, both because the mind of other citizens is thus alienated, and because occasion is given for the armed intervention of the Republic.

848. (C) When the common cessation from work is illegitimate, whether in itself or from the violences employed, the right of the State comes in, to impose an end upon it or to restrain abuses.

For it pertains to the supreme authority to promote the public good, and to prevent those things which disturb the order of society; but strikes which take place not because of a grave and reasonable cause, but for fostering sedition or other motives of this sort, or which bring force upon peaceful citizens, by that very fact disturb peace and the social order, and especially harm industry, commerce, and good morals, as was said above. "Let the authority of the Republic therefore intervene," says Leo XIII, "and, a bridle having been put upon agitators, let them restrain corrupting arts from the morals of the workers, and the danger of plundering from legitimate masters."

849. 3. On conciliation and arbitration.[1] Since it is better to forestall evils than to correct them, it is certainly very expedient to prevent dissensions between masters and workers by councils of conciliation and arbitration, some of which have been instituted by private authority, others by law.

[1] H. Crompton, *Industrial Conciliation*, London, 1876; rendered into French under Weiler's care: *Arbitrage et conciliation entre patrons et ouvriers*, Brussels; *Office du Travail*: *De la Conciliation et de l'Arbitrage*, Paris, 1893; Weiler, *L'organisation des Conseils d'arbitrage etablis en Angleterre*, Paris, 1877; Bayles, *The Shop Council*, New York, 1886, rendered into French under Foccroutte's care: *Le Conseil d'Usine*, Brussels and Paris, 1892; Peronnet, *La Conciliation et l'Arbitrage*, Paris, 1897; de Seilhac, *La greve et l'arbitrage*, *Correspondant*, Dec. 1902, p. 820-842; Tanquerey, in Vacant, *Diction. de Theologie*, t. I, 1733-1737.

(a) First indeed in England, Belgium, and the Federated States of America, already from the year 1860, councils of this sort were created by private authority, composed of an equal number of masters and workers, for solving difficulties which often arise concerning all things that regard industry, e.g., the amount of the wage, the duration of labor, the rules to be followed in the workshop, etc. The president of these councils is either one from the members selected by the council itself, or a certain magistrate of the region who is chosen for this office by the common vote of the workers and masters. By these means many dissensions were peacefully composed.

850. (b) Wherefore, in many regions, laws have been enacted for instituting officially mixed tribunals, which can compose disputes between masters and workers, or for defining the conditions under which arbitrators can be chosen. In most places, recourse to arbitrators remains altogether free; yet in certain places, such as Switzerland and Australia, workers and masters, in the case of dissension, are compelled to submit themselves to arbitration.

What is more opportune concerning this matter is controverted among sociologists. We indeed judge that workers and masters can be compelled, whether through themselves or through delegates, to appear before the magistrate, so that they may honestly set forth the motive of the dissension and their arguments; but it is not expedient that the sentence of the arbitrators be so obligatory that they are compelled to obey it. - The reason for the former is that it is certainly opportune, for forestalling violent conflicts, that delegates of each order meet together and plainly open their mind; for by a sincere exposition of facts and reasons many prejudices are set aside, and the way of concord is prepared. Now, in many cases, unless a legal obligation of acting thus rests upon each party, under whatever pretext, one or the other will reject the proposed convention.

On the other hand, it is generally not expedient that dissenters be compelled to obey the sentence; for who will compel workers to labor for such a master, against their own mind? and, if they labor

unwillingly, will not the work be very imperfect? Likewise, if masters judge that they cannot accept the imposed conditions without their own loss, can they be condemned to certain ruin?

Nor can it be said that a sentence which does not have the force of law is altogether useless; for since this becomes a matter of public right, workers and masters are morally obliged to obey it, provided it seems sufficiently evidently consonant with reason; for they are impelled to this by public estimation, namely lest they incur the indignation of other citizens.

V. On The Means By Which The Condition Of Workers Can Be Made Better.[1]

[1] Soderini, *Socialisme et Catholicisme*, Lille, 1896, chap. 23-27; G. Goyau, *Autour du catholicisme social*, Paris, 1900-1903; V. Brants, *Les grandes Lignes de l'Econ. pol., Moyens generaux d'ameliorer la situation sociale*, t. II, p. 266-363; Millot, *Que faut-il faire pour le peuple?* Paris, 1901; F. Veuillot, *L'Apostolat social*, Paris, 1902; Bouchage, *L'Apostolat paroissial*, Paris, 1903; Berardi, *De officio parochi nostris temporibus*, Faenza, 1902; E. Rostand, *L'Action sociale par l'initiative privee*, Paris, 3 vols., 1892-1897-1902; Vermeersch, *Manuel social*, Louvain, 1900; Baunard, *L'Evangile du Pauvre*, 2nd ed., Paris, 1904. - We also treated these things where we treated Charity, n. 817-835.

851. State of the question. Since these things are so, the office rests upon upright and Catholic men, but especially upon priests, of striving with all their powers that they make the condition of workers better, insofar as this can be done, and thus render concord and peace between the rich and proletarians more firm. To the point Leo XIII: "As regards the Church, she will at no time and in no way allow her work to be wanting, and she will bring so much more assistance, the more liberty in acting shall have fallen to her... let the ministers of sacred things direct all the powers of mind and industry." - These words indeed, spoken in the year 1891, laymen and priests heard, and in various regions they gave themselves to Catholic action; hence diverse institutes were created for the benefit of workers: "banks for loans to countrymen; associations, some for rendering mutual assistance, others for relieving necessities due to misfortunes; sodalities of workers; other helps of this kind, both of societies and of works."[1] This manner of acting received from some the name of Christian socialism, yet less rightly, since socialism, such as it is in fact defended, openly contradicts Christian dogmas; - but from others, popular Christian action, and elsewhere Christian democracy: the former appellation indeed suffers no difficulty; the latter, which did not please many, is nevertheless permitted by Leo XIII, provided it is not twisted to a political sense, and does not seem to exclude superiors and the rich, but "pertains solely to this, that those who sustain life by hand and art be brought to a more tolerable state, and gradually have that by which they may provide for themselves; that at home and openly they freely fulfill the offices of virtues and religion; that they feel themselves to be not animals but men, not pagans but Christians; and thus strive toward that one thing necessary."[2]

[1] Thus Leo XIII, in the Encyclical *Graves de Communi*, Jan. 18, 1901; Max Turmann described the evolution of Catholic action from the year 1891, *Le Catholicisme social depuis l'Encycl. Rerum Novarum*, Paris, 1900.

[2] Leo XIII, the cited Encyclical *Graves de Communi*, which is to be read attentively in its entirety; you have a commentary in the little work: *L'Eglise et la Democratie chretienne* by Goyau, Toniolo, and Pottier, Liege, 1901. - What in past centuries the Gallican clergy did for promoting also the temporal good of the faithful, Sicard sets forth, *L'ancien Clerge de France*, Paris, 1893, t. I, pp. 142-192; 318-335.

It will not therefore be unpleasant to enumerate briefly the principal means hitherto used for improving the condition of workers: 1. the young are to be instructed by Christian education, so that they become good workers; 2. adults are to be united together by various associations, so that they may more securely provide for themselves; 3. they are to be aided by other associations instituted among the richer; 4. they are to be strengthened in faith and virtue through religious associations.

852. 1. The Christian, virile, and professional education of the young. For rendering the lot of workers better, the good education of the young contributes greatly; for many, whether at home or in neutral schools, are not rightly instructed. It is necessary therefore that education be completed in pious works which are called patronages, or in study circles (*cercles d'etudes*, debating clubs). This indeed ought to be: (A) Christian; for piety "is useful for all things, having the promise of the life which now is, and of the future";[1] for by forming young people who are sober, chaste, lovers of labor and thrift, it certainly helps them much to manage even temporal matters prosperously. But, since today errors are scattered everywhere, the faith of the young must be nourished and strengthened: it is not enough to explain rightly, but it is necessary to prove by solid arguments the principal dogmas, such as the existence of God, the immortality of the soul, the divine mission of Christ, the authority of the Church, etc. Let adolescents be taught how, according to their capacity, they may answer the common difficulties of unbelievers, and, in more difficult matters, have recourse to learned men. Among them let some be chosen, endowed with a sharper intellect, a nobler character, and greater fortitude, who may form a special society, imbued with an apostolic spirit, and draw other young persons to the practice of virtues by words and examples. They will be like so many apostles, who will greatly help priests in defending the faith and reforming morals.[2]

[1] 1 Tim., IV, 8.

[2] *Congres international officiel du Patronage de la Jeunesse ouvriere*, from June 10 to 13, 1900, Paris, 1901; Max Turmann, *Les Oeuvres complementaires de l'Ecole*, Paris, 1900; id., *Les Patronages*, 3rd ed. 1901; Gatouillat, *Reflexions pratiques sur la necessite et la direction des Patronages de Jeunes Gens*, Troyes, 1899.

853. (B) Virile, that is, tending to furnish courage of soul and invincible strength of will; and therefore gradually to change boys into men, who can suffice for themselves. For workers are exposed to various allurements, whether internally from passions, or externally from vain human fear and diverse occasions by which they are enticed to evil; it is therefore of the greatest importance that they firmly believe and exteriorly manifest their faith by works, without boasting and without shame; likewise that, strengthened in virtue, they despise the allurements of pleasures, and vigorously resist depraved companions. Wherefore let them gradually be taught how, with the grace of God helping, they can increase their own powers and act manfully, by fleeing useless occasions of sin, and in necessary ones by fighting bravely.[1] Let it be set forth to them how great is the efficacy of association for overcoming difficulties and multiplying energies; and how necessary it is that the upright be united together, so that they may crush the audacity of the evil.

[1] "Obliged without doubt to preserve the child from certain dangers superior to his age or his powers, education nevertheless does not have preservation for its end: this would be the substitution of the effort of the master for the

effort of the child. On the contrary, it aims to form energies which can suffice for themselves and guard themselves: it is necessary to help the weak, but to arrive at making them robust enough to do without helps... One word sums up everything: our moral education wishes to make men." (Ackermann, in *Congres internat.*, p. 30-31.)

854. (C) Professional, insofar as it forms workers skilled in their own art;[2] for the more skilled and at the same time the more honest they are, the more they will be esteemed both by associates and by masters; wherefore at the opportune time they will obtain a greater wage and nobler offices. But in our days it is altogether expedient that the chief principles of social science be handed on to them, so that they may more easily refute the sophisms of socialists, and have very much authority in workers' associations; for thus they will be able to protect moderately and wisely their own rights and those of their associates; thus also the way will be prepared for concord between masters and workers. - But to girls let there be given not only speculative education in letters and arts, but practical education, so that they may learn how they can attend to domestic affairs.[3]

[2] "Yes, it is necessary to develop professional formation and to prepare the young man for social cooperation. Industrial evolution obliges to the one, social evolution imposes the other: these are two new elements which it is urgent to introduce into the education of the child of the people. One will therefore complete his instruction, one will therefore develop his intelligence and his technical skill. Then one will accustom him to foresight, to economy, to the sentiment of solidarity." - Cf. Law of July 21, 1919, on professional teaching.

[3] Thus in Belgium there have been instituted schools which are called housekeeping schools (*ecoles menageres*), cf. Mme Van Gehuchten, *Guide de la Jeune Menagere*, Lierre (Belgium), 1894; de Diesbach, *L'enseignement menager*, Paris, 1903.

855. 2. Various associations instituted among Catholic workers. (A) First of all let workers' associations (*syndicats professionnels*) be promoted; for unless upright and Catholic men are joined together among themselves, they will not be able to protect their rights, and besides, socialist sodalities will altogether preside over the workers and will soon overturn the social order; concerning these associations we have already treated above, n. 833. But among countrymen let societies be instituted which are called agricultural syndicates, by which farmers are helped not a little in learning the best means for cultivating fields more perfectly, and for protecting their rights legally.[1]

[1] On their origin, evolution, many advantages, and organization, de Rocquigny discusses, *Les syndicats agricoles, leur oeuvre professionnelle, economique, sociale*, Paris, 1898; de Gailhard-Bancel, *Manuel pratique des Syndicats agricoles*, 6th ed., Paris, 1900. - What part priests had in their foundation in Belgium, Max Turmann describes, *Les Associations agricoles en Belgique*, Paris, 1903.

(B) Let those mutual associations (*mutualites*) also be promoted, by which workers can render help and assistance to one another, and increase thrift.[2] For since workers receive a modest wage, and are liable to many damages from unforeseen cases or diseases, or from cessation from labor, they will certainly profit much if, by living soberly, chastely, and frugally, they set aside some money at the time when matters are succeeding rather prosperously, and deposit it with those societies called mutuals, which have been instituted in various regions. Certain ones have been created in schools, so that already from boyhood the young may be able to study thrift, and, vain prodigality having been despised, become accustomed to living more sparingly and providing for future necessities;[3] it is altogether expedient to institute these in Catholic schools.

[2] F. Lepine, *La Mutualite, ses principes, ses bases veritables*, Paris, 1903; L. Mabilleau, *La Prevoyance sociale en Italie*, Paris; Rostand, t. III, p. 663-678.

[3] Lepine, op. cit., p. 53-67; M. Turmann, *Educ. populaire*, p. 69-76.

856. (C) To these can be joined cooperative societies, whether for buying merchandise at a lower price, or also for producing certain things.[4] The former are easily instituted and managed; but in small towns it is generally expedient to create societies which do not directly buy goods in order to sell them to cooperators at a lower price, but enter an agreement with merchants, so that these consent to cede to the cooperators some determined part of their profit; otherwise, the hatred and envy of merchants is stirred up, who from the foundation of a cooperative society not rarely lose the greatest part of their profit. - It is much more difficult happily and prosperously to manage the care of societies which are called productive; for for this two things are desired: no small capital, not only for obtaining instruments, but also for paying the manifold expenses which it is necessary to incur for several months before any profit is received; and an expert administrator, who can manage the matter wisely, and who has sufficient authority for commanding the other workers; these things indeed can scarcely be found.[1]

[4] Ch. Gide, *La Cooperation*, Paris, 1900; id., *L'Economie Sociale a l'Exposition de 1900*, Paris, 1902, p. 273-294; id., *Les societes cooperatives de consommation*, Paris, 1904; Clavel et Soria, *Guide pour l'organisation et l'administration des societes cooperatives de consommation*, 4th ed., Paris, 1901; Hubert-Valleroux, *La Cooperation*, Paris, 1904; *Congres des Associat. ouvrieres de production*, Paris, 1900; *Comptes-rendus du Congres de l'Alliance cooperative internationale*, Paris, 1902; Bertrand, *Histoire de la Cooperation en Belgique*, Brussels; Beatrice Potter, *The Cooperative Movement in Great Britain*, London.

[1] Nevertheless bakery societies, or those instituted for making bread, profit better, both because the baker's art is rather easy, and because in well-organized bakeries (*boulangeries*) the price of bread is much diminished, as may be seen in Gide, *Coop. de consommation*, p. 84. - Socialists happily manage not a few productive societies; among these that one excels which is called *Vooruit*, concerning which read *Le Vooruit, la cooperation et l'organisation socialiste en Belgique*, in *Musee social*, Dec. 20, 1897; - about societies of the same kind in France, cf. *Une Enquete sur les boulangeries cooperatives rurales*, in *Musee social*, Dec. 1899. - How necessary it is for Catholics to institute cooperative societies is clear from the fact that socialists use these to spread their errors; for M. Lauzel says, *Manuel du Cooperateur socialiste*, Paris, 1900, p. 17: "In the hands of socialists, cooperation is only a means of socialist action, a powerful lever, capable of moving the capitalist world on its bases of individual property and social injustice. We do not wish to be cooperators for the satisfaction of diminishing a little the infinite misery of the proletariat: We wish to be cooperators in order to cooperate more efficaciously in the social revolution."

Whatever may be the case, if a priest has been the promoter of these societies, let him consent to lie hidden in secret, and commit the thing to be managed to upright and prudent laymen, who at the opportune time will render an account of the whole matter to the members.[2] It must likewise be guarded against that societies of this sort seem to bring some profit to the priests themselves; for if workers suspected this, they would soon be turned away from those societies.

[2] "I call quite particularly the attention of the founding Cure to this important point. Do you wish to have men in your church? Do you wish to form a numerous, lasting, and honorable meeting? Let them administer themselves. Give them a home of their own: they must not be at your home, but at theirs... The changes which have occurred for a century in French society have only made more imperative this need of autonomy, of self-government, as the English say." (L. de la R., *Les Associations d'hommes*, Marseilles, 1903, p. 7, 9.)

857. (D) Among those societies there are deservedly praised those banks which were first invented by Raiffeisen (*caisses Raiffeisen*), and are also called societies of mutual credit (*pret mutuel*), because they give money on loan, with the smallest interest.[1] They consist of farmers of the same parish, who possess certain immovables; these form a certain civil society, constituted according to the laws of each region; directors are elected, who fulfill their office gratis; only the treasurer (*tresorier*) receives some recompense, yet a minimum one. Now poor farmers can borrow money from the society, with the directors approving, if they promise to restore the capital with a small interest; each year the accounts are rendered to the presidents of the society; and if any profit remains, it is not distributed to the creditors, but is either kept, or is spent upon a work of public utility, e.g., for acquiring those recently invented machines by which the work of sowing and reaping is accomplished much more promptly and easily. - To these societies there can be attached insurances against fire, hail, pestilence of animals, etc.[2]

[1] A. Kannengieser, *Catholiques allemands*, Paris, 1892, p. 138-148; Max Turmann, *Associations agricoles*, p. 322-374; G. Malherbe, *Le Raiffeisenisme*, Brussels, 1902; C. Ract, *Les Caisses de Famille*, Paris, 1896.

[2] Max Turmann, op. cit. p. 375-408; de Rocquigny, *Les petites Institutions mutuelles de prevoyance contre la mortalite des animaux*, in *Musee social*, June 1898.

858. 3. Associations formed among the richer for aiding workers. Since workers can scarcely aid themselves and their own sufficiently by their own powers, it is necessary that societies be instituted among the richer for furnishing assistance to proletarians.[3] Now, among those which have already been founded in various regions, these excel: -

[3] Leo XIII certainly inculcates this, in the Encyclical *Graves de Communi*, where he says: "In a not dissimilar way that other head of offense must be removed from Christian democracy: namely, that it so places its cares in the advantages of the lower orders that it seems to pass over the higher; whose use, however, is no less for the conservation and perfection of society... Their benign work is especially advocated, to whom place, census, and cultivation of talent and soul conciliate somewhat more authority in the city."

(A) Societies for building healthy houses,[4] which can be rented or sold to workers at a lower price. This indeed is of the greatest moment: for when workers inhabit a decent house, they not only remain well, but also think less of entering taverns, and live a domestic life which greatly favors good morals and social order. For this, however, it is also required that the wives of workers practically learn the art of attending cleanly and orderly to domestic affairs. - Hence among various Nations laws have been made by which advantages not to be despised are conferred on these societies, especially immunity from certain taxes.[1]

[4] Rostand, *L'action sociale par l'initiative privee*, t. I, p. 147; II, p. 313; Siegfried, *Les Habitations a bon marche*; Gans et Weber, *L'Ouvrier stable et l'Habitation ouvriere*, Paris, 1897; H. Barrau, *Le Congres internat. des Habitations a bon marche*, in *Musee social*, July 1900; C. Wright and Gould, *The Housing of the Working People*, 1895; J. Perez Canto, *El Obrero propietario*, Santiago de Chile, 1903; *Reforme sociale*, March 1, 1904, p. 382-395.

[1] For France see P. Pic, op. cit., n. 1368, where the laws of Nov. 30, 1894, and March 31, 1896, are set forth; for other regions, *Ann. de legislation etrangere*, 1898, p. 546; 1900, p. 26, etc.

(B) To these can be joined societies which rent or sell gardens to workers at a modest price;[2] for they can cultivate these with their own hands, and receive from them fruits by which they are helped not a little in domestic affairs; moreover, it has been found by experience that by the cultivation of gardens relations are made better between the rich, who rent them gratis or for a modest price, and workers

who enjoy them, - drunkenness is diminished, - thrift is increased, - the vanity of socialism appears, insofar as cultivators of gardens perceive better the utility of private dominion.

[2] The origin, utility, and practical organization of these societies is described by L. Riviere, *La Terre et l'Atelier, Jardins ouvriers*, Paris, 1904; cf. D. Lancry, *Une visite aux Jardins ouvriers de Sedan*, in *Democratie chretienne*, Oct. 1897; Lemire, who wrote various things on this matter in the periodical *Le Coin de terre et le Foyer*.

859. (C) To these can be added various associations of insurance against fortuitous cases, or involuntary cessation from labor; for since workers themselves often cannot pay the whole sum of money for protecting themselves against diverse dangers, it is certainly expedient that they be helped in this matter by the richer: this can be done in such a way that when they furnish such a sum of money, benefactors lavish another equal or even twice greater one.[3] - In certain regions, as in Germany, insurance is prescribed by civil law, and a fund is constituted from which pensions can be paid to all workers who labor under disease or old age: to this fund the workers themselves, masters, and the State contribute a determined sum of money. This system indeed has been attacked by many as too much invading the rights of private persons; in reality, however, it has had rather happy effects;[4] whence, in other regions, laws more or less similar to the law which prevailed in Germany are being prepared. Catholics can favor these, yet watching that excessive power not be conceded to the State, but that their rights be preserved for private societies and individuals.

[3] L. Lefebure, *Le Devoir social*, Paris, 1890, p. 217-247; 292-297.

[4] P. Pic, n. 1388-1391, 1394. - In the same place, n. 1392-1393, what has been established in other regions is set forth; and n. 1396-1397, what has been proposed in France concerning this matter. Cf. Salauin, *Les retraites ouvrieres en Belgique*, in *Musee social*, June 1901, July 1902; Ghio, *Les retraites ouvrieres en Italie*, *Musee social*, Dec. 1902; Lemire, *Discours sur les Caisses de retraites ouvrieres*; *Les Questions actuelles*, t. LIX, 1901, pp. 354, 386, 418; t. LX, 1901, p. 2, 72, 107, 112, 130; t. LXVII, 1903, p. 56-63.

A remedy cannot so easily be brought to involuntary cessation from labor (*chomage force*). Yet this brings many evils with it; for it hands over a valid worker to idleness and to all the vices which follow from it, deprives him of the means of honestly supporting himself and his own, and not rarely makes the same man a beggar, a wanderer, and a drunkard.[1] This miserable condition is sometimes alleviated by private charity, especially when not only alms are given, but labor to be furnished is also offered; or also by workers' associations, which furnish to their members a modest sum of money until they are hired;[2] or by those private or public institutes, by whose help workers can more easily be hired (*bureaux de placement*),[3] without being compelled on this account to undergo useless expenses; and certainly it is greatly to be desired that institutes of this sort be multiplied among Catholics. But since, notwithstanding all these means, not a few are compelled to be idle from work, in certain regions a new form of insurance has been created, by force of which the fund is increased which workers' associations divide among members hired by no one.[4] Likewise, in certain cities, subventions have been granted to these associations:[5] this indeed can be expedient at a time when a special crisis flourishes; but, outside this case, it is certainly better so to order the production of things that the number of those who cease involuntarily from work may be diminished.

[1] Varlez, *Les Formes nouvelles de l'assurance contre le chomage*, Paris, 1903, vividly describes these evils, p. 13-15; and also the remedies, p. 23-265; cf. Rostand, t. II, p. 817-897; t. III, p. 609-626; Gide, *Econ. sociale*, p. 235-244; Crafts, *Practical Christian Sociology*, New York, 1896, p. 138-146.

[2] Thus in the periodical *Bulletin de l'Office du Travail*, June 1903, p. 485-488, there is set forth what the Federation of typographers furnished in this matter; cf. M. Lecoq, *L'Assistance par le travail en France*, Paris, 1900.

[3] Le Bailly, *Bureaux Municipaux de Placement gratuit*, Paris, 1890.

[4] On this read Varlez, op. cit., p. 23-71.

[5] Varlez, p. 248-254.

860. 4. Catholic associations by which workers can be aided either in cultivating virtues, or in fulfilling the offices of religion. For the social question is not only economic, but also and chiefly moral and religious. For in vain will the wage paid to workers be doubled, in vain will the price of those things which are necessary for food or clothing be diminished, or the hours consumed in laboring be shorter, unless at the same time the proletarians are well-moraled, sober, chaste, honest, and religious. For if they waste their wage and time in feasts, drinking-bouts, games of chance, and other things of this sort, their condition will become more miserable than before.[1] It is necessary therefore that Catholics enter societies for preparing better things for the people, for solidly instructing the ignorant, for vigorously strengthening the weak, and confirming the unstable in faith; and also for converting those who have been alienated from the true religion, and for gradually drawing all who already believe to a more perfect practice of virtues and religion.

[1] Leo XIII sets this forth excellently, in the Encyclical *Graves de Communi*: "Grant that the wages of those who hire out their work are doubled; that there is also cheapness of provision: yet, if the wage-earner hears those doctrines, as he is accustomed, and uses those examples, which allure to casting off reverence for the Deity and to corrupting morals, it is necessary that even his labors and property waste away. By trial and use it has been perceived that most workers live narrowly and miserably who, although they have work of shorter space and more abundant wage, nevertheless live with corrupt morals and no discipline of religion. Take away from souls the sentiments which Christian wisdom inserts and cultivates; take away providence, modesty, thrift, patience, and the other right habits of nature: you will pursue prosperity in vain, even if you strive much. This plainly is the cause why We have never exhorted Catholic men to enter assemblies for preparing better things for the people, and to introduce other similar institutes, without at the same time warning that these things be done under the auspice of religion, with it as helper and companion."

In this matter it is necessary today that priests assume as cooperators certain upright and pious laymen, who burn with zeal for souls. For everywhere socialists, positivists, and rationalists with all their powers daily strive to scatter their errors among the people; and unless Catholic priests and laymen unite counsels, powers, and efforts, and provoke one another by fraternal emulation to furnish better things, it will be impossible happily to resist the associated powers of adversaries, and to lead back to the right path those wandering from the way of truth.

861. (A) It is indeed greatly expedient to erect confraternities, for promoting piety among those who already cultivate religion; for in our days it is necessary that some faithful lead a more intense Christian life, who can instruct and edify others by words and examples; now confraternities, which, under the auspice and as promoter of a devoted priest, are often gathered to hear pious exhortations and to render life more conformable to the Gospel, contribute not a little to this more perfect practice of virtues. Among these certainly excels the sodality of the Third Order of St. Francis, whose members closely approach the religious life,

without however breaking the bonds of family; for the spirit of this order is this, that luxury and vain delights be despised, and the poor be loved as bearing the image of Christ.[1]

[1] On this see the Encyclical of Leo XIII *Auspicato concessum*, Sept. 17, 1882.

(B) Nor must those societies be omitted which, while they promote the sanctification of the members, lavish on others alms not only corporal, but also spiritual. Such are the Societies of St. Vincent de Paul, which F. Ozanam happily instituted and propagated; for the members visit the poor, and furnish to them not only temporal food, but also the bread of the divine word and of human consolation. Today's socialists indeed attack alms as injurious to the inborn nobility of man, which certainly can be true when it is given from ostentation; but Christian charity, which loves and aids men as brothers, brings nothing indecorous before itself, but rather fosters true fraternity and solidarity: "For there is no man so wealthy that he needs no one; no one is so needy that he cannot profit another in some way: this is inborn, that men confidently ask and benevolently bear help among themselves."[2]

[2] Encyclical *Graves de Communi*.

862. (C) For announcing the word of God to those who have wandered far from the Catholic faith, popular institutes have been created (*instituts populaires, universites populaires*),[3] in which there come together, for peacefully disputing about moral and religious matters, on the one side learned Catholics, and on the other, plebeians who have said farewell to the practice of religion or even to faith. These institutes indeed in our days seem altogether necessary: for there are many who never enter churches, and therefore never hear the word of God; unless therefore Catholics go to those sheep which have perished, it can scarcely be hoped that these will ever return to the sheepfold. Therefore laymen and priests who try to lead wandering sheep back to salutary pastures are worthy of every honor.

[3] On these see Max Turmann, *L'Education populaire*, p. 61-110, where those things which have already been instituted by Catholics in this matter are described.

(D) But since one of the vices which today brings the greatest detriment to workers is intemperance, or the abuse of intoxicating drinks, societies instituted for promoting temperance are very opportune. "For excess of this sort is a perpetual tinder of sin, and a fecund origin of miseries; it buries countless men and whole families in the worst ruin, and drags very many souls headlong into eternal destruction."[4] Hence, in certain regions, especially Great Britain and America, societies have been instituted, whose members abstain altogether from the use of intoxicating drinks. But in France and the Latin regions, in which almost all are accustomed to drink wine, beer, or other fermented liquors, societies have been created in which the members promise to abstain altogether from distilled liquors (*liqueurs distillees*), and to use fermented liquors, such as wine, moderately. Therefore let priests promote those societies which can be better adapted to the character of each region, and let them not omit to furnish a good example in this matter. By laws also the making and commerce of alcohol can be restricted; by education received in schools and family this vice can be diminished; against a scourge of this sort science, morals, the State, and Religion must fight without ceasing.[1]

[4] Third Plenary Council of Baltimore, n. 262. - On the extent and remedies of this abuse see M. Vanlaer, *L'Alcoolisme et ses remedes*, Paris, 1897; J. Bertillon, *L'Alcoolisme et les moyens de le combattre juges par l'experience*, Paris, 1904; *Cyclopedia of Temperance*, New York.

[1] On this we disputed more fully in Tr. on Sins, n. 550-555.

863. Points to be noted for practice. So that priests may act more prudently, before they institute new works, let them carefully inspect those things which in the same region have already flourished for some time, so that, taught by the experience of others, they may avoid rocks and proceed safely. - Moreover Catholic action, of whatever sort it may be, will obtain a happier effect, if all associations, with the rights of each preserved, are joined in one and the same federation.[2] But in any diocese, Catholic priests and laymen should remain subject to the authority of the Bishops: "Finally We again and more gravely admonish this, that whatever plan, in the same cause, either individual men or associated men undertake to be accomplished, they should remember that they must obey the authority of the Bishops entirely."[3] In reality in many dioceses special councils have been instituted for promoting and directing Catholic action; and deservedly indeed: for to new times new means of apostolate must be accommodated.[4]

[2] Hence, in Italy, the Holy Pontiff ordered that all Catholic associations be directed by Catholic Congresses; and it is certainly to be desired that in other regions Catholic Congresses be often gathered, under the auspice and leadership of sacred Prelates, in which common action can be determined by certain general rules.

[3] Encyclical *Graves de Communi*.

[4] "If labor is not imposed upon us as a necessity of existence, let us know how to embrace it and to labor at social works, syndicates, mutualities, and other forms of beneficent action." (Card. Richard, Mandement for Lent, 1904, p. 10.)

By these and other means which zeal for souls, informed by prudence, will suggest, the condition of workers will certainly be rendered better, and gradually all things will be restored in Christ.

§ IV. On Onerous Loan, Or On The Contract Of Credit.

864. State of the question. After the things said concerning the lease of things and of services, it remains to speak of onerous loan, which by certain moderns is called the lease or quasi-lease of money, and by others the contract of credit.

[1] Among the almost countless works written on loan, the principal are: Gibalinus, *De usuris, commerciis*, Lyons, 1656; Bossuet, *Traite de l'usure*, 1682; Leotardus, *Liber singularis de usuris*, Lyons, 1682; Collet, *Traite des usures*, Paris, 1694; Thomassin, *Traite du negoce et de l'usure*, Paris, 1697; Broedersen, *De usuris licitis et illicitis*, Delft, 1743; P. Ballerini, *De jure divino et naturali circa usuram*, Bologna, 1747; Zech, *Rigor moderatus doctrinae Pontificiae circa usuras*, 1747 (Migne, *Curs. Th.*, XVI, 763-996); Biner, *Dissertatio juridica de usuris*, 1766 (ibid., 996-1007); Card. de la Luzerne, *Dissertations sur le pret de commerce*, Dijon, 1823; Pages, *Dissertation sur le pret a interet*, Lyon, 1830-1838; Funk, *Zins and Wucher*, Tubingen, 1868; id., *Zur Geschichte des Wucherstreites*, Tubingen, 1901; Ashley, *An Introduction to English Economic History and Theory*, London, 1892; W. Blissard, *The Ethic of Usury and Interest*, 1892; J. Favre, *Le Pret a interet dans l'Anc. France*, Paris, 1900; H. Savatier, *La theorie moderne du capital et la justice*, Paris, 1898; Bohm-Bawerk, *Capital und Capitalzins*, rendered into French under J. Bernard's care: *Histoire critique des theories de l'interet du capital*, Paris, 1902-1903.

(A) Loan in general is a contract by which a fungible thing, or a thing consumable by first use (above, n. 121-122), is handed over to another on this condition, that, at the appointed time, a thing of the same species and quality be returned. - It differs therefore from commodatum, in which the same identical leased thing is returned, because it is not consumable by first use, but permanent; and also from lease of things, in which the lessor retains dominion of the leased thing, while in loan the

dominion of the money is transferred to another; hence in lease the thing perishes for the owner, while in loan it perishes for the borrower (*emprunteur*), who is held to return a similar thing to the lender (*preteur*).

Loan, according to Roman civil law, is a contract of itself gratuitous, and under this respect it is also distinguished from lease, which is of itself an onerous contract (n. 779). But the question is whether loan can be onerous, namely whether the lender can justly receive, beyond the thing lent (which is called the principal), some gain, namely an increase or interest. This was formerly disputed with great heat among theologians and economists, and today also is frequently debated among sociologists.

865. (B) For understanding this better, certain notions must be set forth. (a) Today money is considered under a twofold respect: as a medium of exchange (*moyen d'echange*), insofar as by the help of money any thing whatever can be procured; as a medium of production (*moyen de production*), insofar as it is capital and an instrument by which new things are produced. Now ancient philosophers and theologians generally held money as a medium of exchange and a measure of saleable things; wherefore they called it sterile, because in reality under this respect it bears or produces nothing.[1] - But modern economists teach that money is not only the measure of saleable things, but also and chiefly a medium of production, insofar as it greatly contributes to producing new things; whence they say that it is virtually fruitful, insofar as it can at once be changed into fruitful things of any kind, and therefore is able to beget many things.

[1] Van Roey, *De justo auctario ex contractu crediti*, Louvain, 1903, p. 150-175; V. Brants, *Les Theories economiques aux XIIIe et XIVe siecles*, Louvain, 1895, p. 133-138.

(b) Wherefore loan can be industrial or commercial, when it is made for producing or distributing new things, namely when money is handed over to those who give themselves to industry or commerce for this end, that they may make something estimable by price; or a loan of necessity, when money is given on loan to the needy, so that from it they may procure for themselves the necessities of life. - Now in antiquity the loan of necessity mostly flourished, while today commercial loan is very frequently made.

866. (c) Moreover the increase or interest received from money lent can be moderate, if, with attention to the practice commonly observed by honest men of this place or time, it does not exceed just limits; or immoderate, if, with all things considered, it goes beyond the limits determined by the upright. Moreover in antiquity interest was not rarely immoderate, namely twenty, thirty, and sometimes fifty percent; while today, among cultivated Nations, it does not exceed five or six percent.

Today the word usury generally designates an immoderate increase; formerly it signified whatever was received beyond the principal, and therefore even moderate interest.

All these things indeed must be kept before one's eyes when ancient authors are read and the history of loan is sketched.

Since the matter is very involved, and the principal difficulties arise from history, we shall hand on a historical survey of this question, setting forth: 1. the doctrine of each Testament; 2. the theories of ancient legislators and philosophers; 3. the common doctrine of the Fathers and Councils up to the twelfth century; 4. the opinions of the Scholastics and the decisions of Councils up to the sixteenth century; 5. the principal systems of the moderns; 6. the doctrine of Benedict XIV and practical resolutions of the Congregations; 7. today's theories concerning loan; 8. the solution of the difficulty which seems more consonant with authority and reason at the same time.

I. The Doctrine Of Each Testament Concerning Loan Is Set Forth.

867. 1. Before Christ, under the Mosaic law, usury was prohibited to the Jews among themselves, but was permitted to them with respect to foreigners.

(A) It was prohibited to Jews among themselves, especially toward the poor and in an excessive way: "If thou lend money to my people, poor, who dwells with thee, thou shalt not urge him as an exactor, nor oppress him with usuries";[1] a little below: "Thou shalt not lend to thy brother at usury money, nor fruits, nor any other thing, but to a foreigner. But to thy brother thou shalt lend without usury that which he needs, that the Lord thy God may bless thee in every work of thine in the land into which thou shalt enter to possess it."[2] That this law was not accurately observed is gathered from the fact that the Prophets reprove usuries, and praise those who do not give their money at usury;[3] wherefore, after the captivity, Nehemiah rebuked usurers thus:[4] "And my heart thought with me, and I rebuked the nobles and magistrates, and said to them: Do you exact usuries, each one from your brethren?... The thing which you do is not good." - Now from the context it is sufficiently evident that, in all these places, the matter concerns a loan made to the needy, but not a commercial loan.

[1] Exod., XXII, 25; cf. Levit., XXV, 35-37.

[2] Deut., XXIII, 19-20; cf. XV, 7-10. - La Luzerne, op. cit., t. I, p. 211-284, shows at length that these texts do not regard commercial loan.

[3] Ps. XIV, 5; Ps. LXXI, 14; Ezek., XVIII, 5-20.

[4] Nehem., V, 7, 9.

(B) Onerous loan was permitted with respect to foreigners; this is certainly clear from the words related above: "Thou shalt not lend to thy brother at usury... but to a foreigner." This indeed is easily understood, if it is kept before the eyes that, under the Old Law, the Jews did not cultivate charity toward foreigners in the same way and to the same degree as among themselves.

From this, moreover, it can at once be gathered that moderate usury is not absolutely and intrinsically evil; otherwise it could not have been permitted by God even toward strangers. - Some indeed have said that this was permitted by force of the supreme dominion of God, as if, namely, he had given to the Jews the power of despoiling foreigners; but this distorted evasion does not please honest men: so unusual a derogation from natural right cannot be admitted without a solid reason.

868. 2. Christ himself handed down these things concerning onerous loan: (a) in the parable of the talents, the master thus speaks to the servant who had hidden the talent received: "Thou oughtest therefore to have committed my money to the bankers, and on my coming I would certainly have received what is mine with usury."[1] From this some

wished to infer that interest from commercial loan is legitimate; but undeservedly; for here the matter concerns a parable, in which Christ sets forth what those who possessed money were accustomed to do in his time, without by that fact wishing to approve their manner of acting; he indeed does not reprove them, but neither does he intend to praise them, since the primary end of the parable is to show that those alone are to be rewarded who have used well the talents received from God.

[1] Matt., XXV, 27.

(b) Elsewhere, speaking of charity, he says: "But love your enemies; do good, and lend, hoping for nothing thereby; and your reward shall be great."[2] From this it is certainly gathered that one of the works of charity which obtain an eternal reward is gratuitous loan; but whether, and in what cases, it is commanded to lend money is not clearly defined, but must be determined from the rules concerning alms. But, as is clear, nothing is said about money handed on loan to the richer, and destined to produce new things; Christ by no means intended here to discuss industrial matters. - In the same sense he says: "To him that asks of thee, give: and from him who wishes to borrow from thee, turn not away";[3] there likewise loan is enumerated among works of charity, and nothing is said about onerous loan, which therefore in the Gospel is neither approved nor condemned.

[2] Luke, VI, 35. - In the older Latin versions it is read: despairing nothing, that is, do not fear lest your money perish; - in the Syriac version: and do not cut off the hope of anyone, that is, do not cast anyone into despair by denying money to one in need. Cf. Fillion, *Les SS. Evangiles, Saint Luc*, in this place. - Some Fathers understood these words in this sense, that even the return of the principal itself ought not to be expected. (La Luzerne, t. I, p. 290-329.)

[3] Matt., V, 42.

It must be noted that under the New Law no distinction is made between Jews and foreigners, but gratuitous loan is commended with respect to all.

II. The Theories Of Ancient Philosophers Concerning Loan.

869. Usury prevailed among most pagan peoples, and generally was approved by laws; but commonly it was reproved by the philosophers themselves.

1. Thus, among the Greeks, immoderate usury flourished: namely borrowers had to pay at least twelve and often thirty percent. Before the times of Solon, debtors who could not furnish interest were reduced to servitude; yet the wise Athenian legislator prohibited this,[1] although he permitted onerous loan.[2] - But the philosophers, by no means distinguishing between use and abuse, condemned all usury as alien to nature. Plato reproves it as contrary to the equality of citizens: according to him, to avoid seditions, it is necessary that there not be two orders of citizens, one very rich and the other very poor; therefore the means by which riches can easily be procured must be prohibited, especially certain forms of commerce and usuries.[3] - Aristotle likewise, averse from every gainful exchange of money, condemns usury especially as contrary to the right of nature; for money of itself is sterile, because coin does not beget coin; nevertheless usurers wish to gain money from money, as if it were fruitful.[4]

[1] Schomann, *Antiquites grecques*, trans. by Galuski, Paris, 1884, t. I, p. 376-379.

[2] A. Boxler, *Precis des Institutions publiques de la Grece et de Rome*, Paris, 1903, p. 72.

[3] Plato, *de Legibus*, V, 742.

[4] Aristotle, *Polit.*, l. I, c. 3, n. 23.

2. Among the Romans, by the law of the twelve Tables, unciary interest was permitted, that is, ten percent; from the time of Sulla, centesimal usury began to flourish, that is, twelve percent; not rarely, however, money-lenders demanded double centesimals, or twenty-four percent; when Christian emperors reigned, semisses usuries prevailed, namely six percent.[5] - Yet Roman philosophers reproved usuries no less strictly than the Greeks; thus Cicero[6] says that, according to Cato, to lend at interest is the same as to kill: "When he was asked what was most expedient in household property, he responded, to feed well... And when he who had asked said, what about lending at interest? Then Cato said, what about killing a man?" Likewise Seneca:[7] "For what are these things, what are debt-book and calendar and usury, except names of human cupidity sought outside nature?"

[5] A. Boxler, op. cit., p. 215.

[6] *De officiis*, II, near the end.

[7] Seneca, *De Beneficiis*, VII, 10.

These things indeed must be kept before one's eyes when the doctrine of the Fathers is weighed.

III. The Doctrine Of The Fathers And Councils Concerning Usury Up To The Twelfth Century.

870. 1. The Fathers generally held usury as something contrary to Christian charity, since in the Gospel it is commended and commanded to give money on loan to the needy, without any hope of gain; indeed, especially in the fourth and fifth centuries, since immoderate usuries were not rarely extorted from the poor, several Fathers openly denounced this as inhuman and unjust. Yet a few tolerated or permitted some moderate gain to be received from money lent. We shall declare this by setting forth certain places of the Fathers.

871. (A) In the first three centuries, the Fathers teach only that interest exacted from a needy person is opposed to the precept of charity and mercy.

(a) Thus, among the Greeks, Clement of Alexandria, speaking of the Mosaic law insofar as it is the source of all moral doctrine, commends its humanity from the fact that it prohibits exacting interest from brethren:[1] "But concerning largess and communication, although many things could be said, it suffices to say this, that the law prohibits lending at interest to a brother; naming as brother not only him who was born from the same parents, but also him who has been of the same opinion, and a participant of the same Logos; not judging it fair that we gather usuries from money, but that with open hands and souls we gratify the needy."

[1] Clem. Alex., *Stromat.*, l. II, c. 18, Migne, P. G., VIII, col. 1023.

(b) Among the Latins, St. Cyprian,[2] in describing the corrupt morals of Christians, severely rebukes very many Bishops, "who ought both to be an exhortation to the rest and an example," and nevertheless, divine care having been contemned, increase interest by multiplying usuries. - But Tertullian,[3] proving against Marcion that the New Testament does not contradict the Old, observes

that the prohibition of usuries which is found in Ezekiel (l. cit.) prepared the way for the more perfect law which commends that the lender renounce the principal itself; for thus they interpret the words of Luke: hoping nothing thereby.

[2] St. Cypr., *De lapsis*, c. 6, Migne, P. L., IV, col. 470-471.

[3] *Adversus Marcionem*, l. IV, c. 17, Migne, P. L., II, 398-399.

872. (B) In the fourth and fifth centuries, the Fathers inveigh much more strongly against usurers; and deservedly: for in these times usuries were sometimes carried even to fifty percent, and sometimes the children of those who could not pay interest were sold as slaves;[1] it is therefore not wonderful that usuries of this sort were reproved as inhuman and unjust.

[1] Troplong, *Contrat de Pret*, Preface, p. LXXXII.

(a) Among the Greeks, St. Basil has an entire homily against money-lenders,[2] in which he declares usury to be reproved by the Sacred Scriptures: "For in reality it is very great inhumanity, that he indeed who lacks necessaries seeks a loan for the support of life, while this one is not content with the principal, but devises revenues for himself from the calamities of the poor, and gathers riches."[3] Afterwards he vividly describes the miserable lot of the borrower:[4] "He who has received silver is at first indeed splendid and cheerful... but, when the monies gradually flow away, and time, advancing, brings interest with it, then nights bring him no rest, the day is not cheerful, the sun not pleasant, but life wearies him. He hates the days hastening toward the appointed time, he fears the months as parents of interest. But if he sleeps, he sees the money-lender in dreams, which is an evil dream over his head, standing by; but if he wakes, he thinks and is anxious about the interest." At the end, he rebukes the usurer thus:[5] "You make gain from calamities, you gather silver from tears, you strangle the naked, you beat the hungry: nowhere is mercy." From these things it is established that the matter here concerns a loan furnished to those in need.

[2] In Migne, P. G., XXIX, col. 263-280.

[3] Ibid., 266.

[4] Ibid., 267.

[5] Ibid., col. 279.

St. Gregory of Nyssa likewise has a whole oration against usurers,[6] where, besides biblical arguments, he brings another philosophical one drawn from the sterility of money; God alone is so omnipotent that he can produce something from things by no means fertile: "But you, of bronze and gold, things not accustomed to bear, do not seek offspring, nor compel poverty to furnish those things which belong to the rich, nor him who seeks the principal to pay usuries."[7]

[6] Migne, P. G., XLVI, col. 433-452.

[7] Ibid., 442.

St. Chrysostom asserts that usuries are prohibited by Christ with respect to all, while in the old Law it was forbidden to exact them from brethren alone; and from this he extols the humanity of Christ: "And see the humanity of the Lord. In these sensible monies he prohibited anyone from receiving usury. Why and for what cause? Because each one is afflicted with great damage. For the debtor indeed is worn away by want, but the creditor, increasing riches, accumulates for himself a multitude

of sins."[8] - Proceeding further, he declares that those who oppress the poor with usuries are guilty of injustice:[9] "Those who are commanded to open their treasures to the needy grow rich from the poverty of others, devising a specious robbery and a well-colored avarice... this is a bond of injustice... Are there not many just trades? Of fields, flocks, herds, manual labors, and skillful care of the household? Why do you rage madly so that you may reap thorns in vain?" - These words indeed are rather easily explained of immoderate usuries toward the poor.

[8] *In Genesim* homil. 56, Migne, P. L., LIII, 377.

[9] *In Matth.* homil. 56, Migne, P. L., LVII, col. 556-558.

873. (b) Among the Latins, St. Ambrose, in the book on Tobit, discusses usury at length,[1] which is a grave sin; for the money-lender hands over to the poor man money which is idle, so that he may receive more than he gave: "He seeks medicine, you offer poison; he begs bread, you extend a sword; he beseeches liberty, you inflict servitude; he prays for release, you tighten the knot of a shapeless snare."[2] There usury is reprehended as something inhuman.

[1] Migne, P. L., XIV, col. 762-794.

[2] Ibid., col. 763.

St. Augustine teaches the same, reproving every interest received from any thing whatever:[3] "I do not wish you to be money-lenders, and therefore I do not wish it because God does not wish it... And how detestable it is, how hateful, how execrable, I think even the money-lenders themselves know... if you have lent at interest to a man, that is, have given your money on loan, from whom you expect to receive something more than you gave; not money alone, but something more than you gave, whether that is wheat, or wine, or oil, or any other thing; if you expect to receive more than you gave, you are a money-lender, and in this you are to be disapproved, not praised."

[3] *Enar. in psalm.* XXXVI, Migne, P. L., XXXVI, col. 386.

St. Leo the Great calls unjust the manner of acting of those who oppress the poor with usuries: "Unjust and shameless avarice, which says that it furnishes a benefit, when it deceives... The iniquity of interest must be fled altogether: and gain which lacks all humanity must be avoided. Wealth is indeed multiplied by unjust and sorrowful increases, but the substance of the mind wastes away: since the interest of money is the funeral of the soul."[4]

[4] Sermon XVII, al. XVI, in Migne, P. L., LIV, 181.

From these and other places, in which the same doctrine is contained, it can be gathered: (a) usury received from the needy is something inhuman and opposed to the precept of charity; (b) in certain cases, immoderate usuries exacted from the poor are truly unjust; (c) but nothing certain can be defined with respect to commercial loan, about which the Fathers are silent.

874. 2. At the same time, Councils first prohibited clerics from receiving usuries; then gradually extended this prohibition to laymen themselves; finally they asked from civil legislators that laws permitting usury be changed.

(A) Already among the Canons of the Apostles (fourth century) we read: "A bishop, or presbyter, or deacon exacting usuries from debtors, either let him desist or certainly be condemned."[5] - The

Council of Elvira (Eliberitanum, 305) also prohibits laymen from receiving usuries, although it acts more mildly with them than with clerics: "If any of the clerics shall have been detected receiving usuries, it has pleased that he be degraded and abstained. But if any layman is proved to have received usuries, and, corrected, shall have promised that he will now cease and will exact no further, it has pleased that pardon be granted him. But if he shall have continued in iniquity, he is to be cast out from the Church."[1] - But the general Council of Nicaea (325) treats only of clerics who were exacting centesimals (12 percent):[2] "The holy and great Synod judged it fair that, if anyone shall have been found after this definition receiving usuries... he be deposed from the clergy." - The provincial Council of Carthage (about 419) brought penalties against usurious clerics, at the same time reprehending usury in laymen; for it says: "What is reprehended in laymen ought much more to be condemned beforehand in clerics."[3]

[5] Can. 44, in Mansi, *Sacr. Concil. Collectio*, Florence, 1759, t. I, p. 56. - Cf. La Luzerne, op. cit., t. III, 1st part, 256-386, where all the canons published concerning this matter are gathered.

[1] Can. 20, in Mansi, t. II, p. 10. - Yet not a few critics hold this last sentence suspect, since it is lacking in Ivo and the *Panormia*, Migne, P. L., CLXI, 805, 1167.

[2] Can. 17, in Mansi, t. II, p. 675.

[3] In Mansi, t. IV, p. 494.

(B) Already from the eighth century the prohibition of usury becomes common even with respect to laymen; Aachen (*Aix-la-Chapelle*, 787): "In the law the Lord himself commanded that it be altogether forbidden to all to give anything at usury";[4] likewise Paris[5] (829) and Meaux[6] (845). - Indeed, from the ninth century, certain Councils declare usurers to be subject to restitution: "If those from whom they exacted usuries survive, let them restore to these what they are proved to have taken more abundantly."[7]

[4] Mansi, t. XIII, p. 825.

[5] Mansi, t. XIV, p. 470.

[6] Mansi, t. XIV, p. 831.

[7] Mansi, t. XIV, p. 937.

At about the same time, namely in the age of Charlemagne, civil law, at the persuasion of the Church, prohibited usuries to all.[8]

[8] "It is only at capitular legislation that one must arrive to find the abrogation of imperial laws on usuries and the agreement of Church and State for proscribing their use. The capitulary of Aachen of 789 (lib. 1, c. 5) forbids usuries to all without exception: *Omnino omnibus interdictum est ad usuram aliquid dare*. This prohibition is repeated in another Capitulary of 813 (lib. V, c. 38): *Usuram non solum clerici, sed nec laici christiani exigere debent*." (Troplong, op. cit., CX-CXI.)

875. 3. Although in these times no explicit distinction was made between immoderate usury and moderate interest, a few facts and testimonies are alleged from which it seems to be established that a moderate increase was tolerated or permitted. Thus Sidonius Apollinaris (430-488), bishop of Clermont, narrates that he went to a creditor named Maximus, to seek delays in favor of a friend burdened with debt; the creditor, who had been made a cleric, benignly granted the delays and forgave the usuries; Sidonius praises this act as a work of piety and mercy, and adds that the creditor had the right to receive

the usuries, "since he could exact the whole," that is, the principal and increase, as appears from the context.[1]

[1] Sidonius, Epistle 24, Migne, P. L., t. LVIII, col. 528-531.

876. Likewise St. Gregory the Great (540-604) asks Anthemius to go to a certain creditor, who had handed merchandise to another under the condition of some interest, and ask him to yield from his right, because matters had succeeded badly for the debtor, thus supposing some moderate gain to be legitimate: "Let him not expect gain from another's loss, but, the principal of the price having been received, let him be content, so that whatever he shall have yielded to the poor man, almighty God may compensate to him, as he has promised, by a multiplied restitution."[2]

[2] Epist. 38 to Anthemius, Migne, LXXVII, col. 973.

Likewise St. Gregory of Tours (538-593) narrates that Desideratus, bishop of Verdun, asked King Theuderic to lend some money to citizens engaged in business, promising that he would return the money with legitimate usuries: "We shall return your money with legitimate usuries."[3] In reality the citizens traded with that money, and indeed with a happy outcome; but the king liberally refused the money offered. - From these things it seems to be established that a certain moderate interest was held as legitimate.

[3] *Histor. Franc.*, l. III, n. 4, Migne, P. L., LXXI, col. 267.

877. 4. Nevertheless, from the time of Gratian (1150), usury was universally prohibited: for Gratian, in his Decree, inserted those sentences of the Fathers and those Canons by which usuries are reproved in a general way.[4] Afterwards Gregory IX, in the Decretals, promulgated an entire title *De Usuris*,[5] where suspension is decreed against usurious clerics, and excommunication against laymen.

[4] *Decret. Grat.*, 2nd p., cause XIV, q. 3-4, p. 734-738, ed. Friedberg.

[5] *Decretal.* lib. V, tit. XVIII, p. 811-816, ed. Friedberg.

IV. The Theories Of The Scholastics And The Decrees Of Councils Down To The Sixteenth Century.

878. For rightly understanding the doctrines of the scholastics concerning loan, it helps to set forth the opinion of St. Thomas, whom nearly all the others followed.[6]

[6] St. Thom., 2. 2., q. 78; Quodlibet III, art. 19; *De Malo*, q. 13, art. 4.

1. Doctrine of St. Thomas. (A) "To receive usury for money lent is, according to itself, unjust."[7] To prove this, he asserts, after Aristotle, that money was principally invented for making exchanges, and thus the principal use of money is its consumption; he treats therefore of loan destined for consumption, not for commerce. This being posited, he thus proves his thesis: (a) If interest is received for money, that which is not is sold, namely the use of the thing which is not distinguished from the thing itself; or, in other words, a double compensation is demanded for the same thing: one indeed, the restitution of an equal thing; but another, the price of use,

which is called usury; this is unjust. For, in consumable things, the use of the thing ought not to be counted separately from the thing itself, but to whomever the use is conceded, by this very fact the thing is conceded; if therefore, besides the principal, some interest is demanded, the use of the thing is unjustly sold, as if it were distinct from the thing itself; just as he would act unjustly who, after he has sold wine at a just price, would wish again to sell the use of the wine separately. (b) Besides, money, which principally is a medium of exchange, is sterile, and therefore nothing can be received for its use.

[7] St. Thom., 2. 2., q. 78, a. 1.

879. (B) But by accident some gain can be received from money lent: (a) "If someone conceded coined money for display or for placing in the place of a pledge; and man can licitly sell such a use of money."[1] For then money is not destined for consumption, but for another use, from which gain is legitimately received. (b) "He who gives a loan can without sin draw into an agreement with him who receives the loan the recompense of damage by which something which he ought to have is withdrawn from him; for this is not to sell the use of money, but to avoid damage."[2] Behold the origin of the extrinsic title which afterward was called emergent damage. (c) "He who commits his money either to a merchant or to a craftsman by way of a certain partnership does not transfer the dominion of his money to him, but it remains his; so that the merchant trades with it, or the craftsman works with it, at his risk; and therefore thus he can licitly seek a part of the profit proceeding from it, as from his own thing."[3] Or, in other words, he who enters a contract of partnership with a merchant and craftsman, lending money so that this man may trade or work with it, licitly receives some gain, because he retains dominion of the money and undergoes the risk of the principal.

[1] St. Thom., 2. 2., q. 78, a. 1, ad 6.

[2] St. Thom., 2. 2., q. 78, a. 2, ad 1.

[3] Ibid., ad 5.

880. 2. Decrees of Councils. These things having been set forth, the Canons of the Councils of this time can be better understood. For since in the Middle Ages industry and commerce did not greatly flourish, money was handed on loan, at least for the most part, not for producing new things, but for consumption, to the needy, and often with the greatest increase (15 and 20 percent):[1] whence it is not wonderful that usury was strictly prohibited. Thus the Third Lateran Council (1179) says that usuries are condemned by the pages of each Testament, and strikes usurers with excommunication.[2] Lyons II (1274) besides prohibits houses from being leased to foreigners wishing to hire them for exercising usuries.[3] But Vienne (1311), after renewing the excommunications formerly laid down, also condemns the error of those who pertinaciously assert that usury is not a sin: "If anyone shall have fallen into that error, that he presume pertinaciously to affirm that to exercise usuries is not a sin, we decree that he is to be punished as a heretic."[4] It is not there defined whether usury is a sin against justice or against charity, whether against the natural law or against positive law. Nor likewise is it declared what usury is; but afterward, in the Fifth Lateran Council (1515), this notion was handed down, which

can be accommodated to the definition of the Council of Vienne: "This is the proper interpretation of usuries, namely when from the use of a thing which does not germinate, with no labor, no expense, or no danger, gain and fruits are studied to be acquired."[5] Wherefore he does not exercise prohibited usuries who receives gain from a thing which is fruitful, or is exposed to some danger of the principal. - Around the end of the sixteenth century, Sixtus V reproves "the gulf of usuries, hateful to God and men, condemned by the sacred canons, and contrary to Christian charity."[6]

[1] "From the twelfth to the fourteenth century, in France and England, on the part of the Lombards and Jews, the rate of 20 percent is cited. Philip IV of France fixes the maximum interest at 20 percent, and lowers it to 15 percent for the fairs of Champagne." (P. Leroy-Beaulieu, *Traite*, t. II, p. 148.)

[2] Mansi, t. XXII, p. 231.

[3] Mansi, t. XXIV, p. 99.

[4] In Denzinger, n. 407.

[5] In Denzinger, n. 623.

[6] *Bullar.*, p. 4, t. 4, p. 263.

881. Many indeed of today's writers turn it into a fault for the Scholastics and Councils that they were ignorant of economic laws and, by the prohibition of usuries, retarded the progress of industry and commerce. - We observe first that the error of which they are accused is not moral, but economic; for they thought that money was sterile, and from this inferred that no interest could be received from money lent according to itself: this principle is true, if money really is altogether sterile. Besides, the error of fact which is attributed to them can easily be excused. For money in itself is truly sterile, and is not made fruitful except when it is turned into fruitful things. Now in the Middle Ages it was very difficult, because of the economic conditions of that time, to turn money into fruitful things: namely, lands could scarcely be procured, because of the system which they call feudal; industries were local and reserved to workers' associations; commerce was exercised only by a few, namely Jews and Lombards; it is therefore not wonderful that money was commonly held as sterile.[1]

[1] "With a very narrow market, without powerful equipment and without active industry, when great enterprises were reduced to the construction of churches and feudal fortresses, productive employments of money were lacking. There was scarcely place, at least in the twelfth century and almost still in the thirteenth, except for loans for consumption... The fixity of feudal property and the general immobility of conditions even excluded what we call today employments in immovables." (J. Rambaud, *Histoire des doctrines econ.*, p. 39.) On the state of industry and commerce, and also on the economic doctrines of the Middle Ages, cf. W. J. Ashley, *An Introduction to English Economic History and Theory*, London, 1892-1893; Ch. Jourdain, *Memoires sur les commencements de l'Economie polit. dans les ecoles du Moyen Age* (*Mem. Acad. Inscr. et B. L.*, t. 28, 1874); L. Cossa, *Di alcuni studii recente sulle teorie economiche nel Medio Evo*, Milan, 1876; Espinas, *Histoire des doctrines econom.*, Paris, s. d., p. 72-119; V. Brants, *Les Theories economiques aux XIIIe et XIVe siecles*, Louvain, 1895.

Besides, if by this prohibition the Church in some way retarded the progress of commerce, she favored agriculture and also small industries, and contributed not a little to the dignity and happiness of workers. Besides, by the contract of partnership and other agreements of this sort, provision was sufficiently made for the evolution of industry, until the invention of machines gave rise to a new state of things, and to a new form of loan which is called the contract of credit.

882. 3. Mitigation of discipline concerning usuries. Already from the fifteenth century a milder discipline gradually began to flourish. (A) First indeed there were instituted Mounts of piety (*Monts-de-piete, Funds of piety*), in which monies and other fungible things were collected which were handed on loan to the poor, by means of some pledge and moderate increase. Now the Fifth Lateran Council (1515) solemnly declared that these mounts were licit and meritorious, "in which, for their expenses and indemnity, something moderate is received only for the expenses of the ministers and of other things pertaining to their preservation, as stated before, merely for their indemnity, beyond the principal, without the gain of the same Mounts." From this it also happened that wealthy merchants, especially Lombards, obtained from princes the license of receiving moderate gain from loan, as was done in the Mounts of piety. And thus provision was made for the necessities of the poor.

883. (B) Afterwards, even with respect to the rich, besides the contract of partnership (above, n. 879), there was recognized the contract of census, by force of which there was acquired the right of receiving an annual pension, first indeed from a fruitful thing alienated, then also from money handed over to another. Such a contract did indeed differ from loan, because money was handed over to another in perpetuity, on this condition, that an annual census (*rente annuelle*) be paid; but, when it was stipulated that the census would be redeemable, in reality that contract was scarcely distinguished from onerous loan. Wherefore it was reproved by Pius V (1569); nevertheless it was held as legitimate by not a few theologians and canonists.[1]

[1] Thomassin sketched the history of this contract of census, op. cit., p. 453-471.

884. (C) Likewise extrinsic titles, from which interest can legitimately be received from money lent, began to be multiplied; namely, not only emergent damage was admitted (above, n. 879), but also ceasing gain, which namely is verified when the lender loses the occasion of gaining, insofar as with his money he wished to buy a census or fruitful field, or to trade licitly; and also danger to the principal, insofar as it is legitimately feared that the money lent may be lost.

(D) Soon by custom and civil law the practice prevailed, in the sixteenth century, of receiving moderate interest (5 percent), as distinct from usury; this indeed Pichler, S.J., acknowledged as legitimate on account of the public good. - Moreover, as opportunities for using money for trading increased, not a few theologians taught that it is permitted to any merchant to demand an increase for a loan, as the price of the obligation of lacking money for a certain time, even if in reality no gain ceased thereby.

885. (E) Likewise the triple contract was acknowledged by many as licit, so called because a threefold agreement was included in it: a contract of partnership, a contract of insurance of the principal, and a contract of insurance of gain. Namely Peter and John enter a partnership of trading, into which Peter contributes 1000 gold pieces, and John his works: Peter hopes from this to gain 200 gold pieces; behold the contract of partnership. But Peter, who does not wish the principal to be endangered, offers John 50 gold pieces so that he may insure the principal: behold the contract of insurance of the principal. But because he prefers a lesser certain gain to a greater uncertain gain, he sells to John the hope of gaining 200 gold pieces for 100 gold

pieces: behold the contract of insurance of gain. When the trading has finished, therefore, Peter will receive 50 gold pieces. Now it is easily understood that by this manner of acting interest of 5 percent is received for money.

But the contract mohatra was deservedly reproved, by which, under the appearance of sale-purchase, immoderate usuries were received.[2]

[2] The contract is entered thus: Peter, needing one hundred gold pieces, wishes to borrow them from John; John denies the loan, but offers to Peter goods to be sold on credit at the highest price, e.g., one hundred and ten gold pieces, with the agreement that Peter immediately sell back the same goods to John at the lowest price, e.g., one hundred gold pieces; thus Peter indeed obtains one hundred gold pieces, but, after a year has elapsed, will return one hundred and ten.

V. The Theories Of The Moderns Concerning Loan.

886. 1. The theories of Protestants. The first defenders of onerous loan were Calvin and Molinaeus (Dumoulin), who had not a few followers.

(A) Calvin (1509-1564) taught that not every usury is a sin, but only that which is opposed to charity toward the miserable, or is opposed to justice, as demanding immoderate interest. For the texts of Scripture adduced above regard only Jews; but reason shows that usury is legitimate, because money is not sterile, but is virtually fruitful, insofar as fruitful things can be procured with it.[1] Oecolampadius, Viretus, and Rivetus followed him.

[1] He set forth his doctrines in *Comment. ad Ezechielem*, and in *Epist. ad Oecolampadium*; cf. Favre, op. cit., p. 127-129; Bohm-Bawerk, op. cit., t. I, p. 32-34.

(B) Molinaeus (1500-1566), a very celebrated Parisian jurist, asserted that money must indeed be lent to the poor without any interest, but that moderate usury is legitimately received from a loan granted to traders; for the public good requires that traders be able to borrow money; now they will not be able to obtain this unless they pay some increase.[2]

[2] *Tractatus contractuum et usurarum redituumque pecunia constitutorum*, 1546; cf. Favre, op. cit., p. 130-145; Bohm-Bawerk, op. cit., t. I, p. 34-38.

(C) Grotius contended that, by natural right, moderate usury is permitted, but confessed that it is prohibited by divine right.[3] - Pufendorf held that it is permitted by both natural and divine right: "For although a coin does not beget another, nevertheless, after eminent price was conferred upon it, by means of the industry of men it is certainly rendered most fruitful, things naturally and civilly fruitful having been procured for it."[4] - Salmasius (Claude de Saumaise, 1588-1658) judged that money can be leased, or that the use of money is saleable, just as the use of all fruitful things is: for money, like a field, is rendered fertile by human industry.[5]

[3] *De Jure belli ac pacis*, lib. II, cap. XII, § 20-23; *Commentar. in Lucam*, VI, 35; cf. Favre, p. 158-161.

[4] *De jure naturae et gentium*, lib. V, cap. 7, § 10; cf. Favre, p. 161-165.

[5] Salmasius, *De usuris*, 1638; *De modo usurarum*, 1639; *Dissertatio de foenore trapezitico*, 1640; *Diatriba de mutuo*, 1640; cf. Favre, p. 148-153; Bohm-Bawerk, I, p. 41-47.

887. 2. The theories of economists. Many writers who gave themselves to political and economic matters generally taught that moderate usury is necessary - and therefore legitimate - for the public good, but especially for commercial affairs.

Thus Montesquieu (1689-1755) handed down that trading would be impossible without onerous loan;[1] Condillac (1715-1780) taught the same,[2] and Turgot, who besides added that money is fruitful, insofar as it is as it were capital, which greatly serves for producing new things;[3] and also Bentham, who contended that the amount of the increase is to be defined not by law, but by the free convention of those making the agreement.[4]

[1] Montesquieu, *Esprit des Lois*, liv. XXII, ch. 19-22; cf. Favre, p. 216-220.

[2] Condillac, *Le commerce et le gouvernement*, ch. 18; cf. Favre, p. 224-226.

[3] Turgot, *Memoire sur les prets d'argent*, presented to the Council of State in 1769.

[4] Bentham, *Defense of Usury*, 1787, in French: *Lettres sur l'usure*, 1787; cf. Favre, p. 232-237.

888. 3. Opinions of certain theologians. Moved by these arguments, some Catholic theologians began to hand down a milder doctrine concerning usury; thus, among others, J. Gibalinus, S.J., who openly defended the liceity of the triple contract;[5] - Maignan, of the Order of Minims, who acknowledges as licit the contract of committed money, "by which someone, retaining for himself dominion of property in his own money, and therefore the right to seek it back, hands it over for trading, not by his own work, but by another's work and industry hired for this, with an agreement of vindicating for himself one moderate part of the gain, to be determined by the judgment of prudent persons";[6] - Le Correur, a Parisian priest,[7] who distinguishes a twofold loan: one, by which a thing is given for consumption, another by which it is given for trading; now gain received from the former, as from a sterile thing, is usurious, but gain accepted from the latter is licit, because the thing is given for a use estimable by price; - Scipio Maffei, who teaches that usury is indeed unjust when gain is demanded beyond the measure determined by laws, or from the poor; but that moderate gain received from the rich, who seek a loan for amplifying fortune, is licit.[1]

[5] Gibalinus, *De usuris, commerciis, deque aequitate et usu fori Lugdunensis*, Lyons, 1656.

[6] Maignan, *De usu licito pecuniae*, Toulouse, 1673, p. 42. P. de Calonia, of the same Order, taught almost the same, *Eclaircissement sur le legitime commerce des interets*, Lyon, 1676; cf. Carriere, III, n. 1114, note 1.

[7] Le Correur, *Traite de la pratique des billets entre les negociants*, Mons, 1684.

[1] Maffei, *Dell' impiego del Danero*, 1744; in French: *De l'emploi de l'argent*, by M. le marquis de Maffei, Avignon, 1787. - Maffei had dedicated his book to Benedict XIV, but nothing shows that this dedication pleased the Pontiff; besides, after the Encyclical *Vix pervenit* had been published, he retracted nothing, but in the second edition declared that the doctrine of the Encyclical was by no means opposed to his theories.

VI. The Doctrine Of Benedict XIV And Of The Roman Congregations Concerning Loan.

889. 1. The Encyclical *Vix pervenit*. Since minds in the Church, and especially in Italy, were greatly moved by these various opinions and controversies, Benedict XIV instituted a congress of theologians for thoroughly weighing the matter, and promulgated their

conclusions in the Encyclical *Vix pervenit*, Nov. 1, 1745, which he sent to all the bishops of Italy.[2] In this Letter, as he himself declares, he did not wish to decree anything concerning those contracts "about which Theologians and interpreters of the Canons go off into diverse opinions," but to establish certain doctrine concerning usuries. This doctrine is contained in five propositions, which we briefly contract.[3]

[2] There is much dispute about the doctrinal force of this Encyclical; for some hold that it is an infallible definition; but others, a doctrinal judgment of the gravest moment, but not infallible. To the point Vermeersch, S.J., n. 360, p. 458: "Observe, however, that this letter was sent only to the bishops of Italy. Long afterward indeed, July 29, 1836, the Holy Office, with the approval of Gregory XVI, seems to have declared in passing that the letter regards the universal Church. Yet this letter could not for that reason become an infallible definition. Wherefore we judge that there is in it the gravest authority indeed, but not the supreme." Likewise E. Van Roey, op. cit., p. 44, note 1, writes that it "is not an utterance *ex cathedra*, but rather bears as it were the form of a decree of some Congregation, approved indeed in a special and more solemn manner by the Sovereign Pontiff, and promulgated by his authority."

[3] You have the text in Denzinger, n. 1318-1322.

1. Usury is placed in this, that someone from the loan itself, which by its nature demands that only as much be returned as was received, wishes more to be returned to himself than was received, and therefore contends that, beyond the principal, some gain is owed to himself by force of the loan itself: this is illicit and usurious.

2. Nor can usury become legitimate from the fact that the gain is moderate, or is demanded from a rich man, or from one who is going to spend the money for amplifying his fortunes, or for buying new estates, or for carrying on gainful business; by force of the loan itself nothing can be received, and if someone has received gain, he will be subject to restitution.

3. Nevertheless, extrinsic titles can concur with the contract of loan, from which a just cause may arise for demanding something more above the principal. - Likewise money can rightly be placed and spent through other contracts different from loan, whether for acquiring annual revenues for oneself, or also for exercising licit commerce and trading, and receiving honest gains from them.

4. In these various contracts equality must be preserved; otherwise injustice is committed and an obligation to restore is present; but with equality preserved, there remains a manifold licit way of preserving and frequenting fruitful trading for the public advantage.

5. It is falsely and rashly asserted that there are always found and everywhere available, together with loan, other legitimate titles, or other just contracts, by which it is permitted to demand a moderate increase beyond the principal. For in many cases a man is held by a simple and naked loan to succor another gratuitously, according to that:[1] "From him who wishes to borrow from thee, turn not away."

[1] Matt., V, 42.

890. 2. Controversies after the Encyclical. This letter did not impose an end on the dispute. Maffei, in a new edition of his work, said that he had taught beforehand whatever the Pontiff handed down, but had not taught whatever was reproved in it; - Fr. Grangier did not cease to defend the triple contract;[2] - De la Forest, parish priest of Lyons, contended

that in a loan of trading usury is not admitted;[3] - Beurrey, a priest of La Rochelle, said that money can be leased as a fruitful thing.[4] At the beginning of the nineteenth century, two men chiefly contended that moderate interest can legitimately be received from commercial loan: Cardinal de la Luzerne, who sets forth that money can be handed on loan to another for a threefold end, for consumption, for conservation, or for increase: in the first case there is loan properly so called, from which usury cannot legitimately be received; in the second and third case, there is the contract of commercial credit, from which moderate interest is legitimately received;[5] - Mastrofini, who tried to show that the faculty granted to the borrower of gaining something by means of the use of the money lent is estimable by price, and therefore a legitimate title for receiving some increase.[1]

[2] *Examen theologique sur la societe du pret a rente*, Paris, 1741; this work was refuted by Lecoq, superior general of the Eudists, *Dissert. theologique sur l'usure*, Rouen, 1767.

[3] *Traite de l'usure et des interets*, Cologne and Paris, 1769, 1776; this was refuted by P. Carpuac, Minor Conventual, *Examen et refutation du Tr. de l'Usure*, Avignon, 1779.

[4] *La question de l'usure eclaircie*, Paris, 1786; this was attacked by Rougane, *Les nouveaux patrons de l'usure refutes*, 1789.

[5] *Dissertation sur le pret de commerce*, Dijon, 1823; this was attacked by Bouyon, canon of Clermont, *Examen du systeme de feu Mgr le Card. de la Luzerne sur le Pret de commerce*, Clermont, 1826.

[1] *Le Usure*, Rome, 1831; this was refuted in the following works: *Osservazioni pacifiche sopra di un'opera intitolata, Le Usure*, Rome, 1834; *Reponse au livre de Mastrofini*, by Moralet, priest of the diocese of Annecy, Lyon, 1836; cf. Pages, *Dissertation sur le Pret a interet*, t. II, Lyon, 1838.

891. 3. Responses of the Roman Congregations. (A) Until the year 1830, the Sacred Congregations, when asked about loan, responded, according to the mind of Benedict XIV, that it is not permitted to receive an increase by force of loan, but only by force of an extrinsic title, namely by reason of danger to the principal, ceasing gain, and emergent damage. Thus, for example, in 1645, to the Chinese Missions it was responded: "By reason of loan, immediately and precisely, nothing is to be received beyond the principal principal; but if they receive anything by reason of a probably imminent danger, ... they are not to be disturbed, provided that account be had of the quality of the danger and its probability"; in the same place it is added that something can be received by reason of ceasing gain and emergent damage.[2]

[2] In *Collectanea S. C. de Propag. Fide*, n. 2118; ibid. n. 2119-2143 you will find the principal responses of the Congregations; cf. Bucceroni, *Enchiridion*, n. 853 sq., 863 sq.

892. (B) From the year 1830, the Sacred Congregations proceeded further: (a) the Holy Office, asked by the bishop of Rennes whether the manner of acting of confessors could be approved, who did not deny absolution to penitents receiving gain from money given on loan to traders, responded, Aug. 18, 1830, "that they are not to be disturbed"; (b) the Sacred Penitentiary, Sept. 16, 1830, declared that priests are not to be disturbed who contend that it is licit to receive an increase of five percent by force of the law of the Prince alone, without another title; (c) the same Congregation responded, Nov. 11, 1831, that a confessor acts more harshly and severely who denies absolution to penitents who received gain from loan by the sole title of civil law;

(d) the Holy Office declared, Jan. 17, 1838, that penitents who received moderate gain from loan by the title of law alone in doubtful or bad faith can be sacramentally absolved, no burden of restitution being imposed. - We here submit the principal part of these documents.

893. Pius VIII, in the audience of the Assessor of the Holy Office, to the doubts of the Bishop of Rennes: - "The Bishop of Rennes in France sets forth to the Sacred Congregation of the Inquisition that the opinion of the Confessors of his diocese is not the same concerning gain received from money given on loan to traders, so that they may grow rich.

The sense of the encyclical letter *Vix pervenit* is sharply disputed. On each side reasons are brought forward to defend the opinion each has embraced, favoring such gain, or contrary to it. From this arise complaints, dissensions, denial of the sacraments to very many traders adhering to this manner of growing rich, and countless damages of souls.

So that they may meet damages of souls, some Confessors think they can hold a middle way between each opinion. If anyone consults them concerning gain of this sort, they try to deter him from it. If the penitent perseveres in the plan of giving money on loan to traders, and objects that the opinion favoring such a loan has many patrons, and besides has not been condemned by the holy See, more than once consulted concerning that matter; then these Confessors demand that the penitent promise that he will obey with filial obedience the judgment of the Supreme Pontiff, if it should intervene, whatever it may be: and, this promise having been obtained, they do not deny absolution, although they believe the contrary opinion to such a loan more probable. If the penitent does not confess about gain from money thus given on loan, and seems to be in good faith, these Confessors, even if they otherwise know that such gain has been received by him or is even now being received, absolve him, no questioning having been made about that matter, when they fear lest the penitent, warned, refuse to restore or to abstain from such gain. Therefore the said Bishop of Rennes inquires: I. Whether he can approve the manner of acting of these latter Confessors. II. Whether he can exhort other stricter Confessors approaching him for the sake of counsel, to follow their manner of acting, until the holy See should bring an express judgment on that question. - C. L. Bishop of Rennes.

On Wednesday, the 18th day of August 1830, our Most Holy Lord Pius, by divine providence Pope VIII, in the usual audience granted to the Rev. Lord Assessor of the Holy Office, the report of the above doubts having been heard together with the vote of the most eminent Lords Cardinal General Inquisitors, responded: To I. That they are not to be disturbed. To II. Provision has been made in the first."

894. The Sacred Penitentiary to the doubts of D. Denavit, Professor of theology in the Seminary of St. Irenaeus at Lyons: - "When doubts concerning the matter of usury are proposed to the Sacred Penitentiary, it always refers to the doctrine of the Supreme Pontiff Benedict XIV, which in reality is sufficiently clear and perspicuous for those who wish to investigate it in good faith.

Nevertheless there are certain Priests who contend that it is licit to receive an increase of five percent by force of the law of the Prince alone, without another title either of emergent damage or ceasing gain: because, they say, the law of the Prince is a legitimate title, since it transfers dominion of the increase just as it transfers dominion in prescription: and thus they utterly annihilate the divine law and ecclesiastical law which prohibits usuries.

Wherefore the undersigned Orator humbly begs that the following doubts be solved: I. Whether in conscience he can deny absolution to the aforesaid priests. II. Whether he ought to. - Lyons, May 25, 1830. Denavit, professor.

The Sacred Penitentiary, the proposed doubts having been diligently and maturely weighed, judged that it should be responded: The Priests of whom the matter concerns are not to be disturbed until the holy See has issued a definitive decision, to which they are prepared to submit themselves; and therefore nothing stands in the way of their absolution in the sacrament of Penance. Given at Rome, in the Penitentiary, on the 16th day of September 1830."

895. The Sacred Penitentiary to the new questions of D. Denavit, professor: - "To the Sacred Penitentiary the undersigned orator again sets forth: From the response of the sacred Penitentiary directed to the undersigned orator on Sept. 16, 1830, those priests are to be absolved who contend that the law of the Prince is a sufficient and legitimate title for receiving something beyond the principal in loan, without another title commonly admitted by Theologians, until the holy See has issued a definitive decision, to which they are prepared to submit themselves: and to this response I humbly and gladly acquiesce. Nevertheless, saving the aforesaid response of the sacred Penitentiary, approved authors having been consulted, and with attention to the doctrine of almost all the Seminaries of France, and especially of those which are directed by the priests of the Congregation of Saint Sulpice, the opinion which rejects the title of civil law as insufficient seems far more probable, safer, and the only one to be held in practice until the holy See has defined. Wherefore to the faithful who seek counsel from me whether they can receive an increase from loan, and who have no title commonly admitted by Theologians besides the title of civil law, I respond that they cannot demand the aforesaid increase, and I deny sacramental absolution if they demand it. Likewise I deny absolution to those who, having received usuries of this sort, that is by force of the title of law alone, do not wish to restore. It is asked: I. Whether I hold myself more harshly and severely toward the faithful of this sort. II. What manner of acting is to be held in practice toward the faithful, until the holy See has issued a definitive sentence. Lyons, Sept. 24, 1831. Denavit, Professor.

The Sacred Penitentiary, the doubts proposed by the orator having been weighed, responded: To I. Affirmatively: since from the response given by the sacred Penitentiary it is clear that faithful of this sort, who so conduct themselves in good faith, are not to be disturbed. To II. Provision has been made in the first: whence let the orator strive to conform himself in practice to the earlier response of the sacred Penitentiary under the date of Sept. 16, 1830. Given at Rome, in the sacred Penitentiary, on the 11th day of November 1831."

From these and other responses of this sort, the practical question is now solved, and moderate gain can be received in every case, until the Holy See shall judge otherwise, with the offices of charity nevertheless preserved, concerning which below; but the speculative question remains to be weighed.

VII. Today's Theories Concerning Loan.

896. They are reduced to three principal ones: of Socialists, Economists, and Theologians.

1. The Socialists, with Proudhon, Lassalle, and K. Marx, contend that no gain can ever be received from money; for since labor is not only the primary, but the unique source of value, the whole value which is produced belongs to the workers themselves; therefore the increase which is attributed to the capitalists is unjustly given to them, since it deprives the worker of a part of the value owed to him.[1] - Certain ones, however, admit that some moderate interest is legitimate so long as private dominion remains.

[1] V. Modeste, *Le pret a interet, derniere forme de l'esclavage*. Bohm-Bawerk sets forth and refutes this theory, t. II, p. 1-136; cf. G. Rambaud, *Hist. des Doctrines economiques*, p. 447-466. - Besides socialists, certain persons reject every increase received from money as illicit and contrary to the good of society: thus J. Moret, *Du pret a interet ou des causes theologiques du socialisme*, Paris, 1873; P. Lafleyre, *Le Catholicisme social*, Paris, s. d., t. II, p. 125-150.

897. 2. On the contrary, Economists who reject collectivism acknowledge not only the liceity of interest from money lent, but also its advantages and necessity, in the state of today's civilization, and proclaim this with one voice;[2] yet they greatly disagree concerning the reason why it is permitted to receive an increase.

[2] P. Leroy-Beaulieu, *Traite*, II, p. 83-108; Gide, *Principes d'Econ.*, p. 487-490.

(A) Many say that the primary cause, or reason, why an increase can be received from money lent is the fruitfulness or productivity of capital and of money, which participates in the nature of capital when it concurs in producing new things. Namely three things concur for production: nature, or natural powers, - labor, and capital: for by means of money, machines, materials, and other things of this sort can at once be procured or made, from which human powers are multiplied and the productive force is increased a hundredfold. Now if money has no small part in the production of things, it ought to have a part in the gain.[3]

[3] Thus chiefly J. B. Say, *Traite d'Econ. Politique*, Paris, 1803; *Cours complet d'Econ. Pol.*, Paris, 1828-29; Lauderdale, *An Inquiry into the Nature and Origin of Public Wealth*, Edinburgh, 1804; Bohm-Bawerk sets forth and critically weighs this theory, t. I, p. 135-243; t. II, p. 248-268.

(B) But others say that by this fruitfulness of money the increase is not sufficiently explained, unless it be added that the increase is the remuneration of the use of money; for money is not productive of itself, but only from human labor; therefore not the money itself, but the use of money confers a right to receive some gain; namely he who uses money lent produces more than he could have produced alone; therefore he who handed money on loan has some right to a part of the things produced.[4]

[4] Hermann, *Staatswirthschaftliche Untersuchungen*, 1870; Menger, *Grundsatze*; cf. Bohm-Bawerk, t. I, p. 244-343; t. II, p. 198-200.

898. (C) Yet this opinion did not please all; wherefore some devised another theory, namely that some remuneration is owed to capitalists because for some time they deprive themselves of things which they could enjoy, and voluntarily cede them to others so that these may be able to produce new things; and this privation, or abstinence, insofar as it contributes something to production, merits a certain recompense.[1] For he who voluntarily abstains from the enjoyment of some money, and cedes it to another, confers on this man an advantage, namely an opportunity of gaining something, which is estimable by price.

[1] N. W. Senior, *Outlines of the Science of Political Economy*, London, 1836; Bastiat, *Harmonies Economiques*, p. 188-211; cf. Bohm-Bawerk, t. I, p. 344-373; t. II, p. 200-230. Lassalle mocked this theory thus, *Kapital und Arbeit*, Berlin, 1864, p. 110: "The profit of capital is the wage of abstinence! Happy, inestimable word! The European millionaires are ascetics, Indian dervishes, canonized saints! They hold themselves on a column, pale of face, bent of body, arm extended to present the plate in which they gather the wage of their privations!" (In Bohm-Bawerk, I, 352.) These things are certainly witty; nevertheless money, of which capitalists deprive themselves for increasing production, profits others more than if it were uselessly consumed in pleasures.

(D) But others, thinking that the unique source of value is human labor, contend that an increase is nothing other than the price of previous labor; namely money, like capital, is as it were labor inserted into some thing and as it were frozen in it (*travail cristallise*); when therefore money is handed on loan, by that very fact some labor is furnished to another, which certainly is worthy of some recompense.[2] - Yet certain German writers propose this theory otherwise; for they say that the capitalist is as it were a minister constituted by society for producing goods, to whom therefore an increase is owed as the recompense of quasi-social labor.[3]

[2] J. Mill, *Elements of Political Economy*, London, 1821; M. Culloh, *Principles of Polit. Economy*, 1825; Courcelle-Seneuil, *Traite d'Econ.*, Paris, 1858; cf. Bohm-Bawerk, I, 374-384.

[3] Schaffle, *Das gesellschaftliche System, der menschlichen Wirthschaft*, 1873; Wagner, *Allgemeine oder theoretische Volkswirthschaftslehre*, 1879, I p.; Stolzmann, *Die Sociale Kategorie in der Volkswirthschaftslehre*, Berlin, 1896; - cf. Bohm-Bawerk, I, 384-394; II, 230-248.

(E) Some reject these theories as insufficient, and propose a new one, by force of which increase becomes legitimate from the difference which exists between present goods and future goods; namely present goods are worth more, other things being equal, than future goods; thus, for example, one hundred coins possessed here and now are deservedly estimated as worth more than one hundred coins which will be possessed only after a year has elapsed; wherefore he who here and now hands one hundred coins to another, on this condition, that they be returned to him after a year, in reality loses something if, after the year has elapsed, he receives only one hundred; therefore he has the right to obtain something more: otherwise equality is not preserved.[1]

[1] Thus Bohm-Bawerk, t. p. 332: "Loan is a true exchange of actual goods for future goods... Actual goods possess a value superior to that of future goods of the same kind taken in equal quantity. Consequently and as a general rule, a determined quantity of actual goods can be acquired only with the help of a more considerable sum of future goods."

899. (F) Finally certain eclectics compose several of these titles together, so that they may more easily demonstrate the legitimacy of the increase. Thus P. Leroy-Beaulieu thinks that the principal foundation of a legitimate increase is indeed the productivity of money, but that at the same time the difference between present and future goods, and also the privation which the creditor suffers and the danger to the principal, and the advantage enjoyed by the debtor, contribute to this.[2]

[2] P. Leroy-Beaulieu, *Traite*, II, p. 83-94; cf. Bohm-Bawerk, II, p. 137-159.

From these things it can be gathered that the matter is sufficiently tangled, and therefore that ancient theologians cannot be censured without injustice because they were ignorant of the principles of today's economic science: they could not foresee the evolution of industry and commerce; besides, from the things said, the dispute is still under the judge.

900. Today's theologians, before the Code, held various opinions:

(a) Some, adhering to the footsteps of Benedict XIV, said that every gain received from loan itself by force of loan is unjust, but that moderate gain can very often be received by force of an extrinsic title, e.g., on account of a special danger to the principal, emergent damage, ceasing gain, or a conventional penalty.

(b) Certain ones, with Ballerini (n. 707-735), contended that an increase cannot be received from loan properly so called, but from the lease of money.

(c) Many also, after Lehmkuhl, thought that loan taken in the proper sense excludes the right to usury (1296), but today generally passes into the lease of a quasi-fruitful thing (1314).

Today, however, in practice one must stand by the solution which the Code exhibits, c. 1543, concerning which we must now speak.

VIII. Doctrine To Be Held And Practical Conclusions.[3]

[3] F. Cavallera, in *Semaine sociale*, 1921, p. 71-76.

We shall speak: 1. on loan in general; 2. on pecuniary loan.

901. 1. On Loan in general the Code hands down these things (c. 1543): "If a fungible thing is given to someone in such a way that it becomes his, and afterward as much is to be restored in the same kind, no gain, by reason of the contract itself, can be received. But in the furnishing of a fungible thing it is not of itself illicit to agree concerning legal gain, unless it is established that this is immoderate, or even concerning a greater gain, if a just and proportioned title supports it."

It is explained and proved by parts.

(a) The matter concerns a contract by force of which a fungible thing, and one consumable by first use, either physically or morally, e.g., a cask of wine, is given into someone's dominion on this condition, that a thing of the same kind be restored in the same quantity, whatever name may be imposed upon this contract.

Now, by force of such a contract, no gain can be received.

1. It is established from natural right. For it is not permitted to someone to sell what is not his own. But the use of a fungible thing given to another so that it may become his and afterward be returned in the same quality and quantity does not pertain to the giver. Therefore the giver cannot receive gain from that use.

But the minor is proved thus. In a fungible thing, use is not distinguished from dominion; but dominion pertains to him to whom the thing has been given; therefore also the use. Cf. above n. 878.

2. It is established from ecclesiastical right, namely from the various documents which have already been adduced, especially from the Encyclical of Benedict XIV, *Vix pervenit*.

(b) Nevertheless, in the furnishing of a fungible thing it is not of itself illicit to agree concerning moderate legal gain.

It was indeed sharply disputed whether civil law, other titles failing, could render usury licit. Before the Code, the affirmative opinion seemed more probable and could be held in practice, especially from the response of the Sacred Congregation de Propaganda Fide, 1873: "Other titles of whatever sort failing... the one title of civil law also can be held as sufficient in practice."[1]

[1] *Collect. de Propaganda Fide*, n. 2140.

But the Code declares as of itself licit an agreement concerning legal price, which is presumed just, unless it is established that the gain is immoderate; but it abstains from a formal explanation of this liceity.

Yet the reason seems to be the following, according to many. Civil authority can validly transfer the dominion of material goods from one to another by reason of the common good; but when some gain is determined by law on the occasion of the contract of which the matter concerns, it is presumed that a transfer of dominion from one to another is required for the common good, and this now becomes licit.

(c) Indeed, in the furnishing of a fungible thing, it is not of itself illicit to agree concerning greater gain, if a just and proportioned title supports it.

But what can be a just and proportioned title is gathered from the doctrine already commonly admitted, and confirmed by the Sacred Congregation de Propaganda Fide, in the year 1873, in these words: "Other titles of whatever sort failing, of which kind are ceasing gain, emergent damage, and the danger of losing the principal or of undertaking unusual labors for the recovery of the principal." Namely the matter concerns the privation of gain which the lender would have had if he had not given the loan, the detriment which the lender suffers in his own things by reason of the loan, the special danger of losing the principal or of undertaking extraordinary labors for the recovery of the principal. To these titles there is also added the title of conventional penalty, by which the borrower obliges himself to pay something by way of penalty, if he shall not have returned the principal at the appointed time.

Now, when these extrinsic titles are present, according to common estimation, the lender has a right to some compensation estimable by price, provided that it does not exceed just proportion.

2. On pecuniary loan.

The question concerning pecuniary loan is solved theoretically from the principles already set forth. But it can be asked whether today in practice a just title is always present for receiving gain. Now these things seem to us to be established.

902. (A) Today, on account of the peculiar economic conditions of society, money is virtually and truly fruitful.[1]

[1] Antoine, ed. du Passage, p. 602-606.

The matter therefore concerns today's times, but not past or future ones, in which economic conditions can be plainly diverse. Nor do we contend that all money has been fertile at every time,

but that today, because of special circumstances, it is virtually productive. For money of itself is sterile, because coins do not generate coins; but it can be called virtually fruitful, because today it can at once, and without any difficulty, be converted into fruitful things or fruitful uses. This aptitude for gainful uses does not depend on the special industry of the individuals using it, but inheres in money itself, as it is now generally considered. For it is very easily converted into fertile fields, houses from which a legitimate census is received, machines and instruments from which the productive force of labor is greatly increased. But if some persons do not wish to use their own money in this way, everywhere there are agricultural, industrial, and commercial societies which vehemently desire to render this money fruitful, for a moderate increase; nor are States, Cities, and Municipalities lacking, which earnestly solicit capitalists to be willing to commit monies to them, for moderate interest, for promoting the public good.

Nor should it be said that money entrusted is only the occasion, but not the cause of gain, which in reality is acquired from human labor alone.

It is indeed true that coins, without man's industry, remain idle and produce nothing of themselves, just as generally a field does not bear fruits without cultivation, nor does an instrument work anything without the hand of the craftsman. But the farmer who wisely uses money for cultivating lands better, the craftsman who with money lent obtains more perfect instruments, legitimately make a much greater profit, and indeed from those things which they have obtained by the help of money; therefore money is not only the occasion, but truly an efficient instrumental cause, at least partial, of this increase, and consequently can vindicate some right to a part of the profit.

903. (B) Since today money is virtually fruitful, it is permitted to receive from it moderate interest, provided that the matter does not concern a charitable loan (n. 905).

For he who hands money over to another to be used deprives himself, for a determined time, of the opportunity of making some gain, and confers an advantage on another, insofar as he furnishes to him the faculty of gaining something; or, in other words, on the part of the creditor there is ceasing gain, while on the part of the debtor there is an opportunity of increasing his revenues. Moreover these two things are something estimable by price, which merits some recompense. Formerly the title of ceasing gain occurred rather rarely; but today, given the virtual fruitfulness of money, it has become universal.

904. (C) The contract by which money is committed to another, under the condition of some moderate increase, is not properly loan, nor lease of money, but a contract of its own kind, which can be called the contract of credit.[1]

[1] On this see E. Van Roey, op. cit., p. 219-297.

(a) It is indeed not loan, such as it was understood by the ancients; for according to them, in loan there was handed over a thing consumable by first use, which in no way was fruitful; while today there is handed over a thing which is virtually fruitful; hence in antiquity loan was of itself gratuitous, while today the handing over of money is not made except for some price.

(b) It is not lease of money, because in lease the thing is not alienated, but the same thing altogether is returned after some time; while in our case, money is truly alienated, and is returned only in an

equivalent.

(c) But it is a contract of its own kind, which can be called the contract of credit; in reality it is already called by this or a similar name among those skilled in commercial affairs; and deservedly; for he who hands money over to another truly entrusts to him the use of his thing, on this condition, that after a determined time there be returned both a thing equivalent to the thing committed, and some recompense for the use of a thing virtually fruitful. - Nor is it wonderful that a new name is required for a new thing; now, given the change which has obtained a place in economic matters, a new contract, unknown to the ancients, gradually and insensibly has prevailed, which is subject to new rules.

And thus, unless we are mistaken, the apparent discrepancy between older and more recent theologians concerning this matter is very well explained. The ethical principles are the same today as in past centuries; but the economic conditions are altogether diverse. At the time when money was held as sterile, it was true to say that no increase could be received from money lent by force of the loan itself, but only by force of an extrinsic title. But today, since money has become virtually fruitful, it is no less true to say that from the contract of credit, by which it is handed over to another, some increase can legitimately be received, provided it is moderate.

905. 2. Practical conclusions. (A) In our days, as in the time of Christ, charity can demand that we succor a neighbor placed in grave necessity by the help of a gratuitous loan, namely when he cannot pay an increase, and besides we are able to do this without grave inconvenience. To the point Benedict XIV, cited Encyclical: "For this at least can be hidden from no one, that in many cases a man is held to succor another by a simple and naked loan, especially as Christ the Lord himself teaches: From him who wishes to borrow from thee, turn not away."[1] Ordinarily, however, the rich are not held to hand over great sums of money on loan to the poor, because of the danger of losing the principal, and they can imitate St. Francis de Sales, who was accustomed to give a small sum of money to the poor or to richer persons asking for a loan, and thought such a manner of acting to profit himself and others.

[1] Matt., V, 42.

906. (B) Outside these cases, it is permitted to receive moderate interest from credited money; indeed anatocism is not prohibited of itself, or an agreement by which interest due and not yet paid produces a new increase (*capitalisation des interets*).

Interest, however, will be moderate if it is proportioned to the danger to the principal, ceasing gain, emergent damage, and other circumstances of times and places, according to the common estimation of the upright. Wherefore, where there is a legal rate or one defined by custom, one must stand by this, unless there are special reasons for seeking something further, e.g., a greater danger of losing the principal. - Therefore those are to be reproved as guilty of injustice who abuse the need of others in order to extort immoderate usuries.

Today, among cultivated Nations, the increase is sufficiently moderate (4-6 percent) and gradually becomes less each year, especially when money greatly abounds, and besides wars do not arise in which it is uselessly consumed.[1] And it is certainly to be desired that the increase decrease still more;

for thus those who lack wealth, and besides enjoy talent, skill, and activity, by borrowing money, will be able to produce new things, not only for their own utility, but for promoting the good of the Republic.

[1] On the causes which chiefly influence the diminution of interest, P. Bureau discusses ingeniously, *La Diminution du revenu*, Paris, 1893; cf. P. Leroy-Beaulieu, *Traite*, II, p. 109-182.

§ V. On The Contract Of Partnership.

907. I. Notion and species. 1. The contract of partnership is that by which two or more bind themselves to contribute some thing in common, so that the gain which can arise from it may be divided among them in equal proportion.

[2] Lugo, disp. XXX; Billuart, diss. V, art. 3; St. Alphons., n. 904-910; Carriere, II, 851-900; Marc, lib. IV, n. 401-426; Ball. P., n. 884-891; Genicot, n. 651-652.

Therefore two elements are found in it: (a) some thing placed in common, which can be either money or some movable or immovable good, or also some work, industry, some commercial credit. A partnership can be entered in such a way that both together contribute money and work, - or one work and the other money; and indeed equally or unequally.

(b) Some gain to be divided among the partners (*societaires*); this is the intended end, namely that some advantage be received and divided: this can be either money, or the use of some thing, or an intellectual or moral benefit. It is not necessary that in fact some gain be received, but it suffices that it can probably be received. But if there are losses, the partners equally and likewise ought to undergo them.

908. 2. Today partnerships are countless, and are ruled by various rules among diverse nations.[1] - We shall set forth those which are more received.

[1] For France, cf. Cod. commerc., a. 18-64; Boeuf, *Resume de Droit Commercial*, Paris, 1903, p. 26-108; Baudry-Lacantinerie et Wahl, *De la societe, du pret, du depot*, Paris, 1898.

(A) Partnership can be universal or particular: the former contributes in common all present goods and all profits, or only all profits afterward to be made; but the latter contributes certain determined things, or their use, or the fruits to be received from them, or a determined trading. This is much more frequent than universal partnership.

(B) But particular partnerships are some civil and others commercial: the former are indeed entered for making gain, but in another way than by trading; e.g., for buying and cultivating estates, for building houses, for instituting and administering colleges, etc.; but those are called commercial which give themselves to trading.

(C) Under another respect, partnerships are: (a) designated by a collective name,[2] when two or more partners act under a common personal name (*raison sociale*), so that each one is held personally and in solidum for all the debts of the partnership; thus, e.g., Desclee, Lefebvre and associates; (b) anonymous, when the partners do not act in their own collective name, but in the name of the partnership (*Banque de France, Credit Lyonnais*), so that they are not held for debts beyond the portion of capital which they contributed or ought to have contributed.[3]

[2] For France, Cod. Commerc., a. 19-28; Boeuf, p. 37-70.

[3] For France, see law of July 24, 1867, and Aug. 1, 1893; Boeuf, op. cit., p. 70-80; Houpin, *Traite general theorique et pratique des societes civiles et commerciales*, 3rd ed., Paris, 1901.

909. II. Principles. The offices of partners, whether among themselves or toward others, must be defined both from civil law, and from the special statutes of each partnership. Wherefore we can hand down only general principles.

1. On the obligations of partners toward the partnership. (A) Any partner ought honestly and integrally to transfer to the partnership all those things which he promised to contribute (*apports*), whether the matter concerns money or things, or industry and work; otherwise, he commits injustice and is held to restore the damage inflicted. If money was promised, and was not handed over, legal increase is owed.

(B) Partners cannot act in the name of the partnership itself, and bind it, except under the conditions determined by law, statute, or custom; likewise they cannot use things proper to the partnership except in the predefined way. If, contrary to laws and statutes, they involve themselves in the administration of the partnership, they act in their own name and bind themselves, but not the partnership.

(C) Administrators must manage the affairs of the partnership as their own, with at least common diligence, and therefore adequately compensate damage arising from culpable neglect.

910. 2. On the obligations of partners among themselves. (A) The partition of gains must be made according to the laws of equity, that is, proportionately to those things which any partner has contributed to the partnership, with attention not only to money and things, but also to industry and work furnished. But gains are computed after expenses have been deducted; wherefore there is also made a partition of losses proportionately among the partners, if these surpass the gains. Yet in many partnerships, losses are limited to the part which has been contributed in common: thus especially in anonymous partnerships.

Generally this proportion is determined by law and particular statutes, and one must stand by it in conscience, unless it is manifestly unjust. Thus a convention would be unfair by which one of the partners is altogether excluded from gain; but if someone is altogether exempted from loss, although he has a part in gain, there is not a partnership properly so called, but another contract, by force of which he who furnishes work will obtain an aleatory part in the gain.

(B) No partner can convert common money to his own uses: for this pertains to the partnership itself, but not to the individual partners, before partition. Wherefore, if any gain has been taken from the common fund, it must be restored without delay, with legal increase; besides, the damages inflicted on the partnership on this head must be compensated, as was said concerning the unjust damager and possessor in bad faith.

911. III. The principal ways by which injustice is committed in partnerships, especially anonymous ones.[1] Today frequent injustices are committed in the institution and management of partnerships, especially anonymous ones, which it is expedient briefly to enumerate, not only

so that confessors may bring a fair judgment concerning them, but also so that those who transact business with these partnerships may be more cautious.

[1] Cf. Cl. Jannet, *Le Capital, la Speculation et la Finance*, Paris, 1892, p. 167-188.

1. In the institution itself of partnerships, (a) not rarely the founders attribute to themselves a part of the gains which greatly surpasses those things which they contributed to the partnership, namely by greatly exaggerating the value either of the things which they placed in common, or of the industry and work which they furnish or promise to furnish; it is certainly fair that those who have devised some undertaking and by their industry have formed the partnership receive some recompense, either in numbered money, or by the concession of rights which are called founder's shares;[1] but in all these things it is not permitted to exceed that which, all things considered, is held by honest men as a fair retribution.

[1] To the point Jannet, op. cit., p. 167: "Founder's shares (*deferred shares*, as they are called in England), are in themselves very legitimate, and, under this form, there is nothing to object to the levies of founders: they represent the legitimate remuneration of the conception of an affair. But these levies are effected most of the time under the form of increasing contributions in kind, such as immovables, patents of invention, clienteles." In the same place he brings examples, and adds: "In ten commercial or industrial affairs put into shares, the public lost more than 84 million!"

(b) When the capital of these partnerships is increased, often administrators retain for themselves a part of the money subscribed by private persons, and apply only half the part for increasing the resources of the partnership (which is called watering the stock, *mettre de l'eau dans le capital*):[2] from this it happens that the revenues of the partners are unjustly greatly diminished. - This also frequently occurs when two or more partnerships are joined together at the same time to constitute a new one, or to form what they call a trust.

[2] "Other times an already existing company increases its capital, under the pretext of extending its affairs, without a proportional increase of profits being the consequence; this is called, in America, putting water into the capital." Cf. Nettleton, *Trusts or Competition*, p. 54-56; Martin Saint-Leon, *Cartells et Trusts*, p. 119, 124-129.

912. (c) Sometimes also a partnership is instituted with capital plainly insufficient for managing the matter prosperously; a little afterward, when the partnership is now tending toward ruin, the founders, either through themselves or through others, institute another partnership, which at a cheap price procures all the resources of the prior partnership, to the great detriment of those who had contributed monies to it.[3]

[3] Cl. Jannet, op. cit., p. 168.

(d) Bankers (*banquiers*) are likewise guilty of injustice, who cooperate in instituting these partnerships, by issuing and selling shares and obligations at a price which they know to be greater than fair;[4] directors of newspapers,[5] who receive money for extolling the value of these partnerships, when they foresee that readers, deceived by these writings, will suffer damage from this.

[4] Ibid., p. 168-170; cf. Cauwes, *Econ. Politique*, t. II, n. 651-655.

[5] "When in March 1888, *L'Assurance financiere* put up for subscription, at the price of 250 fr. each, 100,000 savings bonds, the treaty passed between M. Boulan and M. Xau, publicist, fixed at 2,850,000 fr., that is, 28 fr. 50 per title or 11 fr. 40 per 100, the expenses of publicity." (Jannet, op. cit., p. 171.)

913. 2. In the management of partnerships not a few frauds likewise are committed: -

(a) To capture the confidence of the people, political men or nobles are put in charge of these partnerships, who cannot or do not wish to give time and work to the business of the partnership, whether because of inexperience, or because they are already preoccupied with other business:[1] deceived by the authority of these names, not a few adhere to the partnership and not rarely lose part of the money committed.

[1] "Senators and deputies of the right, of the left, of the center throw themselves upon financial companies as upon prey: the title of former minister is worth a place as president of an administrative council: the common run of deputies and senators simply becomes administrator. There are indeed two or three hundred in this case, seeking to cut out for themselves some sinecure rather thin by the direct profits it gives, but which one hopes ought to be more productive by indirect profits, premium issues, participations in syndicates." (P. Leroy-Beaulieu, in Jannet, op. cit., p. 176.)

(b) Sometimes also the same men apply themselves to the management of various partnerships, and unjustly favor one before another.

(c) Frequently also the partners are deceived by a fraudulent exposition of affairs: in the earlier years gains are distributed which in reality have not been made (*dividendes fictifs*), so that thus new partners may be drawn to procure shares or actions at a greater price; this being done, a little afterward, the partnership suffers bankruptcy.

By these and other frauds of this sort, injustice is committed, and damages unjustly inflicted must be fairly compensated. - Therefore let priests act cautiously in judging concerning these matters, and not imprudently induce their parishioners to adhere to such or such a partnership, on the pretext that the president has merited well of the Catholic religion: for experience establishes that certain persons have been deceived by the shadow of a great name. Let them warn the same persons besides not to contribute money to those partnerships which are opposed to religion or good morals: for then they are made cooperators in the evil performed by those partnerships.

Article III. On Aleatory Contracts.

914. Aleatory contracts, so called from the die (*coup de de*), are those in which that which is given or promised by one or each contracting party depends on an uncertain event. - For sometimes uncertainty exists only with respect to one contracting party, - as in insurance, in which one pays a certain thing, while the other obliges himself to repairing an uncertain damage; but sometimes what must be furnished by each depends on chance, as in gaming. - But the event can be uncertain in a twofold way, either because it is future, or because it is unknown, although present or past.

From this it follows that an aleatory contract differs much from a conditional one: for the latter does not exist unless the condition has been fulfilled, while the former is firm and absolute, although it is uncertain whether or which of the contracting parties ought to furnish something.

The principal aleatory contracts concerning which we must treat are: 1. insurance, in which for a certain price a right is acquired to compensation for possible damage; 2. gaming and wagering, in which a certain price is attributed to the victor; 3. stock-exchange speculations, which approach gaming, insofar as they bring a determined or indetermined gain to one of the contracting parties and damage to the other.

§ I. On Insurance.

915. 1. Notion, origin, and liceity. (A) Insurance is a contract by which one person, for a certain price, obliges himself to compensate damages which another can suffer from an involuntary case. - He who takes upon himself the obligation of compensating damage is called the insuring party or insurer; but the other is called the insured.

[1] Lugo, disp. XXXI, n. 93-103; Carriere, III, n. 951-1011; Lehmk., n. 1131-1135; Ball. P., n. 933-937; Genicot, n. 656-658; - for French civil law: Alauzet, *Traite general des Assurances*, Paris, 1844; Agnel and de Corny, *Manuel general des Assurances*, Paris, 1900; - for America: J. W. May, *The Law of Insurance*, 4th ed. revised by Gould, Boston, 1900.

The matter of this contract can be whatever, on the one hand, is estimable by price, and, on the other hand, is subject to some danger. Thus ships and goods are customarily insured against the danger of shipwreck, buildings or movables against the danger of fire, crops against the danger of hail, fragile things against the danger of breakage, the integrity of members against mutilation, life against the danger of death, etc.

(B) A contract of this sort, almost unknown to the ancients, was instituted in modern times, and today among all cultivated nations has especially prevailed. In the fourteenth century, it was first introduced with respect to goods to be carried over the sea, namely when maritime commerce had already begun to flourish. In the seventeenth century, the first society of insurance against fires was founded in London (1684); in the eighteenth century, a society of the same kind was instituted in France;[2] in the nineteenth century, almost countless societies of this sort appeared everywhere and with respect to dangers of every kind.

[2] Sicard, *L'ancien Clerge*, t. I, p. 475-476, describes how Bishops in France instituted a certain kind of insurance, by prescribing collections in churches for bringing help to those who had suffered some damage from fire.

916. (C) In antiquity some theologians doubted concerning the liceity of this contract, because they feared lest it bear before itself something usurious; but today, its nature having been better inspected, its legitimacy is acknowledged by all, provided that the rules to be set forth below are observed. - Indeed there is no one who does not see its social utility. For it concerns the public good that damages which can occur from a fortuitous case be foreseen and forestalled; otherwise industry and commerce would often be retarded in their progress, and often also masters and workers would be led to the extreme of poverty and want; now, for forestalling damages of this sort, nothing simpler and more efficacious has hitherto been devised than that contract by force of which, by means of a modest price paid each year, a fund is instituted for compensating all damages fortuitously occurring. - Thus besides, the foresight and thrift of individuals is promoted, joined with the greatest security.

917. 2. Principles. In a general way one must stand by the laws and special statutes by which the mutual offices of the insurer and the insured are determined. Yet it helps to set forth certain general principles, by whose help the difficulties more commonly occurring can be solved.

(A) On the price to be paid. The price of insurance ought to be proportioned to the quantity and probability of the danger, according to the estimation of prudent persons. For the equality of this contract is placed in this, that, all things having been diligently weighed, there be a fair proportion

between the probability and extension of the danger and the price which is paid by the insured, so that, from things commonly occurring, the insurance society, after all damages have been compensated, may receive some moderate gain. - But this proportion is determined according to statistics which today are sufficiently accurate; and, since besides there are many societies, not only national but also international, which freely compete in this matter, commonly the current price is legitimate. For, if the gain is immoderate, soon other societies will be stirred up which will furnish insurance against the same danger for a lower price.[1] But it would have to be said otherwise if all or most societies agreed together not to diminish the price. - Besides, when the price seems excessive, nothing prohibits mutual societies from being instituted, in which the insured themselves have a part in the gain received.[2]

[1] Wherefore that which Lehmkuhl says (n. 1135) rarely occurs: "For if those who have a part in the insurance society, after all expenses of administration have been deducted, are accustomed each year to have excessive gain, e.g., as it is sometimes said to happen, 20 percent and beyond, for the sum which they handed over for the sake of caution: this seems to me to exceed the limits of justice." - Besides, before a thing is declared unjust, it must be weighed whether these gains do not proceed from the great number of insured persons, from the skill of administrators, who wisely apply the money received to fruitful uses, and especially whether there is danger of losing all these gains, when a common calamity occurs, e.g., a fire in which the greatest part of a city is destroyed. Cf. Ball. P., n. 935.

[2] Astresse, *Traite general des assurances mutuelles*, Paris, 1901; Agnel and Corny, op. cit., n. 177-198.

918. (B) On the offices of the insured. The insured ought honestly and sincerely to declare the true value of the thing insured and all the dangers to which it is exposed. Otherwise there will not be proportion between the price which is demanded by the society and the danger which it takes upon itself.

(a) Wherefore, by natural right, the contract is void if, in declaring the danger of the thing insured, a notable circumstance is voluntarily kept silent, which, if known, would have prevented the contract from being entered; but if the circumstance is not notable, so that the contract would nevertheless have been entered, the contract is valid, but the insured is held to increase the price by reason of the danger. Hence also, if, after the thing has already been insured, the danger is increased, this ought to be candidly declared. - But often by civil law, or from special statutes contained in the agreement itself, the contract is declared void even when a circumstance of little note has been kept silent, or at least rescindable at the will of the insurer, and indeed in such a way that he can retain the price already paid, although he is not held to compensate the damage. Yet this, as being less consonant with natural right, does not oblige except after the sentence of a judge.

Thus, when the matter concerns life insurance (*assurance sur la vie, life insurance*), not a few of the insured deceive concerning their age, so that the price to be paid is diminished; then the price ought to be increased, so that the premium may be licitly received.[1] But if a disease has been kept silent, from which the danger of death is greatly increased, the error is substantial, and he who knowingly deceived the insurers not only loses the right to the money already paid, but also ought to compensate the damages which the society underwent from this. This indeed is true even when the insured has subjected himself to medical investigation, as is the custom: for he ought sincerely to set forth diseases known to himself, and candidly to respond to legitimate questions proposed by the physician.[2] - Yet, if, as the years pass, the health of the insured grows strong beyond expectation, the

contract is made valid, because the contract is implicitly renewed as often as the price is paid and accepted.

[1] According to the statutes of certain societies, the insured can make a new declaration without losing his rights, provided he increases the price; but according to the statutes of others, he loses all his rights as soon as the fraud has been recognized. - For France, see Maire and Gellie, *Manuel theorique et pratique de l'Assurance sur la vie*, Paris, 1898; Agnel and Corny, op. cit., n. 258-468.

[2] Yet, in Germany and certain other regions, many societies declare in their statutes that they renounce the right of attacking the contract on account of false declarations, after it has already endured for five years; but not so in France (Agnel and de Corny, n. 360-376). As to Germany, see Ph. Huppert, *Der Lebensversicherungsvertrag*, Mainz, 1896.

919. (b) When error concerns the value of the thing, these things can be established, with attention to natural right alone: if each contracting party has erred in good faith, the contract remains valid, but, the error having been discovered, the value of the thing insured and the price to be paid ought to be diminished; if each knowingly and willingly agreed concerning the excess of value, the convention assumes the nature of a wager (*gageure*), concerning which we shall speak below; if the insured deceived the insurer, the contract is indeed invalid as to the excess of value, but it stands as to the true value of the thing, which therefore ought to be compensated, in the case in which the thing perishes: for the error is not substantial, and therefore does not void the whole contract. - If anything contrary is declared in the statutes, it does not oblige in the forum of conscience except after the sentence of a judge.

But the value ought to be declared as it is commonly estimated at the time the contract was entered; but if it has been diminished at the time when the thing perished, the insurance society commonly does not compensate damages except proportionately to the value then had, according to the estimation of arbitrators.

Wherefore if movables which had been insured have for the most part been sold, this ought to be declared so that the price and the owed compensation may be proportionately diminished. But if this declaration was not made, and therefore the price was not diminished, one must distinguish: if this was done fraudulently, restitution of all things is not owed, but only of those things which truly perished; but if this was done in good faith, the insured can retain whatever the society paid: for damage is not unjustly and voluntarily inflicted on it, since the same price had been paid each year.

N.B. From the things said above, where we treated the unjust damager, n. 477, he who voluntarily destroys an insured thing not only does not obtain a right to compensation, but ought to repair all damages unjustly inflicted. - But he who, in the case of a fortuitous fire, in no way tries to restrain the conflagration, is likewise guilty of injustice; for he ought to use ordinary diligence for protecting his own things; he is guilty a fortiori who prohibits others from extinguishing the flames.

920. (C) On the offices of the insurer. (a) The insurer ought to be equal to compensating all damages concerning which he is held: for to this he explicitly obliges himself. For this, however, it is not necessary that he possess a sum of money equal to all the goods whose danger he has taken upon himself, but only that he have as much as is probably required for compensating the damages which, from things commonly occurring, can happen: for it is plainly improbable that all the goods whose danger he has taken upon himself will perish at the same time.

Therefore societies act unjustly which take upon themselves more dangers than they can probably compensate, unless however they immediately reduce the danger to just limits by having recourse to societies of reinsurance, which, by means of some price, consent to undergo a proportionate part of the danger.

If the insurer is unequal to repairing the whole damage, the insured can rescind the contract and seek back the price paid, because he had not consented to the contract except for obtaining perfect security. - Hence also, if, after he has paid the price, the insured thing has perished, he has the right of pursuing full reparation of the damage by all legitimate means.

921. (b) The insurer ought to repair the whole damage truly inflicted on the thing insured, according to the conditions determined in the contract itself, and indeed as soon as morally possible after the thing has perished or has become worse: for he does not make his own the price paid by the insured, except by obliging himself to repair damages.

But what compensation is owed must be defined both from law and from the statutes expressed in the agreement. As to the time at which compensation ought to be furnished, the insurer can indeed wait until it is morally established that the damage was inflicted by a fortuitous case, but not by the fault itself of the insured or of his family; but he would act unjustly who, when this is established, under one or another pretext, deferred compensation, or compelled the insured without reason to present himself before a tribunal.

But when the damage has been inflicted from the grave fault of the insured,[1] or of his relatives - namely of those who are designated in the statutes of insurance - the insurer is not held to compensate it. But if it has occurred from the malice of others, the insurer ought to repair it, unless it has been established otherwise, yet with his recourse preserved against the unjust damager: for then the insurer succeeds to all the rights of the insured with respect to the author of the damage.

[1] If the fault is light or only juridical, the insured licitly accepts compensation, unless he is deprived of this right by the sentence of a judge, from the things said n. 475.

§ II. On Gaming, Wagering, And Lottery.

922. I. On gaming. 1. Here the matter does not concern gaming insofar as it is relaxation of the mind, or bodily exercise ordered to the recreation of the mind; but that in which those playing agree concerning a certain price to be handed to the victor as a prize.

Gaming can be threefold: aleatory, whose outcome depends altogether on chance, as in the game of dice; industrial, in which the event depends chiefly on the skill of those playing (*billiard*, or baseball); mixed, whose outcome depends partly on chance and partly on skill, as a game of cards.

923. 2. Its liceity. Honest gaming, in which only a relatively modest sum is exposed to the risk of chance, and to which those playing do not give themselves frequently or for long, but only for the sake of useful recreation, is altogether permitted by natural right. For, on the one hand, relaxation of the mind is licit in itself, indeed often morally necessary, - and, on the other, games in which no price at all is exposed grow languid. - But if the sum of money is notable relative to those playing, and especially if the game is played

frequently and for long, sins of prodigality, imprudence, idleness, and sometimes drunkenness are committed, insofar as the victors rejoice in cups and the vanquished seek solace in wine. Moreover those who expose money necessary for the support of the family sin against charity and piety. - But it is chiefly to be feared lest a habit of gaming be contracted, and those playing, leaving honest labor, give themselves wholly to dangerous speculations; for immoderate gaming easily excites vain hope and an inordinate desire of gaining money without proportionate labor. Wherefore priests ought diligently to watch lest penitents or parishioners, especially the younger, become accustomed to these games.

924. But here we must inquire especially what conditions are required so that gaming may be immune from injustice. Now there are four principal conditions of this sort: -

(A) That those playing can freely dispose of the goods which they expose: for they cannot expose to the risk of chance things belonging to another, or things of which they do not have the administration, or money necessary for paying debts.

Wherefore (a) if someone in reality exposes another's money and gains, he can indeed keep the gain, as an industrial fruit; but if he loses another's thing, the victor, who certainly knows this, cannot retain it, but ought to restore it to the owner, although afterward he can seek compensation from him who was defeated, provided that this man is not unable to pay.

(b) Minors, or wives, or others under a guardian cannot expose in gaming except those sums of money of which they have free administration. Hence he who has won from them a great sum of money which they could not alienate cannot retain it, but is held to restore it.

925. (B) That the game be entered freely; otherwise there will not be true consent, and therefore no true contract of gaming. Hence: -

(a) He who plays with one half-drunk, or half-witted, or another who is incapable of full consent, ought to restore the gain received from him.

(b) If someone has been induced to play by grave fear, fraud, or another unjust means, he is not held to pay the money which he lost, because he did not furnish free consent; but if he himself came out victor, he is not held to restitution, because he inflicted no injury on the other. But he who used fear or fraud is held to restore that which perhaps he gained, because he inflicted injury on the defeated.

926. (C) That the laws of the game be honestly observed, namely by avoiding frauds and illicit arts; otherwise damage is inflicted, and he who has used fraud is held not only to restore the gain unjustly obtained, but also to repair the damage which he inflicted by depriving another of the hope of gaining something.

Yet certain stratagems in gaming, as in war, are permitted or at least tolerated by custom or rules, e.g., to simulate fear or confidence, so that the other may become more daring or more timid, according to the various opportunities of the game.

927. (D) That some equality be preserved among those playing; for if someone very skilled were to abuse the simplicity of another in order to draw out from him abundant sums, he would commit injustice.

But if someone, already of mature judgment, knowingly and willingly plays with another more skilled, he cannot complain, because no injury is done to one who knows and wills; likewise, if each player was ignorant of the greater skill or lack of skill of the other, but wished to try fortune, properly speaking no injury is committed; because in this case the matter is truly aleatory, and each in good faith consents to the damage which he can suffer.

N.B. In most regions, civil law neither approves nor acknowledges the contract of gaming; in others, certain games are prohibited as dangerous or as preparing a way for frauds: in which case, the law, as ordered to the common good, is to be observed even in conscience; if the game is explicitly declared void, the victor cannot retain the gain; otherwise, if it is held only illicit, the conditions set forth above nevertheless having been observed, he can.

928. II. On wagering (*gageure, pari, betting*). 1. Wagering is an aleatory contract by which two or more, contending concerning the truth of some thing or of some uncertain event, agree concerning some price which will fall to the victor.

2. Concerning the liceity of this contract the same must be said as concerning gaming, above, n. 923; one must altogether guard against the habit of easily wagering being contracted, especially when the price is relatively notable, since nothing more turns men away from honest and arduous labor, and nothing more efficaciously leads them into drinkings and drunkenness. This is especially true of the habit of wagering in public horse races; wherefore, in certain regions, this is prohibited by civil law, because of many abuses arisen from it.

Yet if wagering is done rarely, on account of an honest motive, e.g., as relaxation of the mind, or as a stimulus for investigating the truth of a thing or fact, and indeed concerning a licit or at least indifferent thing, a moderate price having been fixed, it is not illicit of itself.

929. So that this contract may be immune from injustice: (a) the prize must be equal on each side, unless however one of the contracting parties spontaneously and freely offers a price of greater value; (b) the event must be uncertain to each party; whence if one is truly certain concerning the event, he cannot licitly wager, unless he openly says that the fact is known to himself and the other nevertheless perseveres in wagering: for then this man yields from his own right, and is judged, under the appearance of wagering, to make a donation.

930. III. Lottery is an aleatory contract by which, a certain price having been paid, the right is acquired of obtaining some prize, if the lot favors. - This indeed is not illicit of itself, since that which has already been set forth concerning gaming and wagering can be said of it; but it easily draws toward many abuses, especially by exciting a vain hope of quickly growing rich without labor; whence not a few are found who abstain from almost everything in order to buy a lottery ticket. Wherefore in many regions it is wisely prohibited by civil law, or at least is permitted only with special license, on account of a grave motive.

931. So that a lottery may not be unjust: (a) there ought to be a fair proportion between the price paid and the hope of obtaining the prize, with attention both to the value of the prize and to the number of those competing. Hence it is not permitted to the owner or institutor of the lottery to gain much more than he could make in honest business, unless however it is known to all that the lottery was instituted for promoting some good work: in which case the lottery is nothing other than an occasion of giving alms, with a modest hope of gaining something.

(b) Every fraud in drawing tickets or in attributing the prize to the victor must diligently be avoided: for if equality among those competing is taken away, or the proposed prizes are diminished, injustice is committed.

§ III. On Stock-Exchange Speculations.

932. 1. The nature of these speculations is briefly set forth. (A) The stock-exchange (*Bourse, Borse, Stock-Exchange*) is a place in which public revenues, shares and obligations of societies (*actions, obligations, stock, bonds*) are sold and bought, and also certain goods, such as grain, oil, wools, metals, etc. Whence a twofold Exchange is distinguished: the financial Exchange, where revenues and shares or obligations are sold, and the commercial Exchange, where certain goods are sold.

[1] Carriere, III, n. 1248-1266; Berardi, n. 938-940; Ball. P., n. 927-932; Genicot, n. 664-665; Deville, *Les Operations de Bourse devant la conscience*, Lyon, 1884; A. Tavernier, *Traite elementaire des Operations de Banque et de Bourse*, Paris, 1899; Courcelle-Seneuil, *Traite theorique et pratique des operations de Banque*, 8th ed., Paris, 1899; Courtois, *Traite des Operations de Bourse*, 12th ed., Paris, 1902. - On this we wrote more fully in French in the *Supplement*, p. 216*.

Now contracts entered in either Exchange are of two kinds: either for the present, or for a term (*au comptant ou a terme*). Concerning the former nothing special occurs to be said, since the rules set forth above concerning purchase-sale must be applied to them: for then certain rights or goods are bought or sold for ready money.

(B) Therefore the whole difficulty turns on contracts for a term; in these, securities or goods are bought or sold on this condition, that the price be paid after a certain time, e.g., on the first or fifteenth day of the month (which day is called the liquidation day), and indeed the price which on that day will prevail in the Exchange. Now, since a price of this sort is liable to perpetual changes, the contract is aleatory and is called a certain speculation, because each contracting party can gain or lose something, according as the price will be greater or less on the day of liquidation. But when this day arrives, securities or goods are generally not handed over, but only the difference between the price which prevailed in the Exchange on the day of purchase and that which prevails on the day of liquidation is paid to the victor.

The matter is declared by an example. On May 3, Albert buys from Augustus, for the price of 7000 francs, which he will pay on the fifteenth day of the same month, a revenue of 300 francs, confidently expecting the price at that time to be 7080 fr.; if the matter stands thus, Augustus will pay to Albert the difference, namely 80 fr.; but if the matter shall have stood otherwise, and on May 15 the price is 6950, Albert will hand to Augustus the difference, namely 50 fr.

934. (C) When the buyer sees that he will suffer some damage if he pays the difference, he can seek that the operation be extended, or deferred for fifteen days (*se faire reporter a la quinzaine*). For this, however, it is required that he find a third contracting party who, at the fixed price, buys the revenue and promises to cede it back at the same price after fifteen days, yet by means of some increase; and thus, if during that time the value of the revenue is increased, the buyer, far from losing anything, can receive some gain.

Thus, to take the same example, on May 15, Albert asks that the operation be extended to the end of the same month; therefore he asks Casimir that, for the current price 6950, he receive the revenue which on the first day of June he will cede back for 7025; for then, if in reality the revenue on the day of liquidation is worth 7080, Albert, far from losing 50 fr., will gain the difference between 7025 and 7080, that is, 55 fr.

935. (D) Sometimes also, so that the damage which the buyer can suffer may be limited, he can contract under the condition that the agreement is rescindable, provided that a certain determined premium be left to the seller (which is called *marche a prime*).

Thus Albert, in buying for 7000 fr. a revenue of 300 fr., can stipulate that he can renounce this agreement, provided that on the day before liquidation he yield to the seller a determined premium, e.g., 20 fr.; wherefore, if on the day before liquidation he foresees that the revenue will be worth only 6950, he can declare that he wishes the contract to be rescinded; and thus, in place of 50 fr., he will lose only 20 fr.

936. 2. Moral principles concerning stock-exchange speculations. (A) Operations of the Exchange, even for a term, are not of themselves unjust, provided frauds are avoided, and no more money is exposed to the risk of chance than the contracting party can pay.

For the speculations of which the matter concerns are nothing other than certain wagers concerning the increase or decrease of revenues or goods, and at the same time aleatory games, in which the victor receives some prize; therefore they are licit under the conditions set forth above. - Nor should it be said that these operations are illicit because they furnish a means of acquiring great riches without proportionate labor; for, so that someone may be able to enter contracts of this sort with sufficient security, he ought diligently and daily to inspect the state of industry, commerce, and the money market: for the perpetual changes which occur in the price of things arise not from fortuitous chance, but from various causes, which speculators ought excellently to know, unless they wish to rush into certain ruin. - Besides, it concerns the public good that there be certain men who, by the hope of gain, are drawn to investigating things of this sort; for thus the true price of a thing is more easily and safely defined, and provision is better made for the progress of industry and commerce.[1]

[1] Concerning the utility of speculation as to goods, Cl. Jannet writes, *Le Capital*, p. 241-279, where, among other things, he says: "Operations for a term are indispensable to industry; it needs to count on deliveries of raw materials at fixed times and at determined prices in order to establish its cost prices... The market for a term is also in general rule favorable to producers; for it assures a constant outlet for their products. Without it, there would be long periods during which farmers would not find anyone to sell their products to or could do so only to local merchants inclined by the absence of competition to exploit them... Today, on the contrary, in Europe as in the United States, every owner is sure of being able to sell his products on the day he wishes and at a price in relation with the quotation of the regulating market." - He says almost the same concerning revenues, shares, and obligations: "If there were not sellers

for a term, that is, speculators who hope at liquidation to procure the titles below the rate at which they sell them today, one would not find anything to buy on certain days. This was seen for the employments of the funds of savings banks, in May, June, and July 1890. Ready money did not suffice to furnish counterparts to the demands for revenue; the term - that is, the great speculators - alone could furnish the quantities demanded." (C. Jannet, op. cit., p. 358.)

937. (B) They are guilty of injustice who by deceit, fear, or fraud strive that the prices of securities be artificially increased or diminished, with their own gain and the damage of others. Thus they act, for example, who scatter false rumors concerning the prosperous or calamitous state of such a kingdom or such a society, so that they may deceive others and induce them to sell securities at a lower price or to buy them at a greater one;[1] likewise those who join together so that by any means, right or wrong, they may oppress societies hateful to themselves. For these are unjust means, of themselves apt to inflict damage on others; and the gain captured from this arises not from chance or prudence, but from fraud; but fraud ought to patronize no one.

[1] "The great players seek to make the event arrive, rise or fall, on which they have wagered: this is what constitutes stock-jobbing, and what makes its character absolutely culpable from the moral point of view. The bulls and the bears are organized into two parties which deliver fierce struggles to one another, by employing the most immoral means. False news spread in a low voice or special financial newspapers were the infancy of the art. - Today recourse is had to false statistics of production to influence prices." (C. Jannet, op. cit., p. 279-280.)

938. Corollaries. (a) Those who knowingly and willingly take upon themselves so many and such great aleatory affairs that they foresee themselves very probably going to be incapable of satisfying all their obligations, by that very fact are guilty of injustice; for they expose themselves to the danger of inflicting damage on others. - Thus also, with greater right, it must be said of those who expose to the risk of chance not only their own money, but also money committed to them by those who do not wish to be mingled in these speculations.

(b) But those who spend upon aleatory affairs resources necessary for feeding the family not only lack prudence, but also sin gravely against the charity owed to children.

(c) Moreover the custom of giving oneself to the games of the Exchange is very dangerous, both because of the excessive anxieties which it brings with it, and because of the danger of temporal ruin which it induces, and because of the acts of injustice to which it easily impels, and other evils which we described where treating gaming, n. 923.

(d) But speculations of this sort are forbidden to clerics, because they assume the nature of trading. Hence the Holy Office, April 15, 1885, declared that "according to the things set forth and with attention to the peculiar circumstances of the time, ecclesiastical persons are not to be disturbed if they bought or buy shares or titles of a money-bank, provided they are prepared to stand by the mandates of the Holy See, and abstain from any trading of the said titles, and especially from every contract which has the appearance, as it is commonly called, of *dei giuochi di borsa*"[1] (*jeux de bourse*).

[1] In *Nouv. Rev. Theol.*, t. XXV, p. 604; cf. Ball. P., Tr. IX, n. 478.

Scholion On The Virtues Annexed To Justice.

And let these things suffice concerning contracts and the virtue of justice properly so called.

As to the virtues annexed to justice, elsewhere there is discussion of religion,[2] of piety,[3] of observance,[4] of truthfulness,[5] of equity or epikeia.[6]

[2] On the Virtue of Religion.

[3] On Various Obligations.

[4] Ibid.

[5] On Justice, where treating lying.

[6] On Laws.

But others, according to St. Thomas, are the following: gratitude, which inclines to acknowledging and in some way compensating benefits;[7] vindication, which inclines to rendering to the wrongdoer the penalty owed for injury;[8] affability (comity, urbanity, *civilite, politesse*) which inclines to rightly ordering intercourse with one's neighbor in serious matters;[9] liberality, which disposes man to rightly spending money.[10] Concerning these see the Angelic Doctor, who discusses these virtues excellently.

[7] St. Thomas, 2. 2., q. 106-107.

[8] 2. 2., q. 108.

[9] 2. 2., q. 114-116.

[10] 2. 2., q. 117-118.

Appendix: The Encyclical Rerum Novarum of Leo XIII

Encyclical Rerum Novarum Of Leo XIII — On The Condition Of Workers

(May 15, 1891).[1]

[1] P. Tiberghien published a French translation of this Encyclical, with annotations, Tourcoing, Duvivier, 1919.

I. Occasion And Confirmation Of The Encyclical.

The Encyclical Rerum novarum, often cited in this Treatise, which not only by Catholics, but also by outsiders is deservedly called the Great Charter of workers, we hand down here entire, adorned with summaries by which the principal arguments and logical divisions may be exhibited more lucidly.

1. The occasion was the miserable condition of workers arisen from those causes which we described n. 47-53.

(A) To this miserable condition liberal Economists assigned no other remedy except liberty in the contract of labor, in exchanges and industry, by force of which the production of goods is increased and therefore the condition of masters and workers together is made better, without any intervention of the State.

(B) But on the contrary Socialists contended that the one truly efficacious remedy was the intervention of the State, by force of which, private dominion first having been extinguished, the means of production would be handed over to the Government or municipality, and revenues would be distributed equally (above, n. 68 sq.).

(C) Between these two extremes certain Catholics proposed social doctrine, resting upon evangelical and theological principles, by which, the right of property being preserved, the condition of workers would be made better both by private associations and by the intervention of the State and the Church for restraining abuses introduced by industrialism. Among these there stood out: in Germany Em. von Ketteler, bishop of Mainz (an. 1860), and his disciples Lutze, Dasbach, and Kolping; in France A. de Mun, M. de la Tour du Pin, Freppel, bishop of Angers, C. Jamiet, H. Joly, Le Play, who after the year 1870 devoted work to religious and social restoration; among whom, however, the first two conceded more to State intervention, the rest less; in Switzerland Decurtins; in Austria von Vogelsang, Lichtenstein, Kuefstein; in England, Card. Manning, and in the United States Card. Gibbons, who, the bishops cooperating, asked the Holy See that the association of workers Knights of Labor (Chevaliers du Travail) not be numbered among secret societies.

All these things being rightly weighed, Leo XIII, who had kindly received delegates of Catholic workers at Rome, on May 15, 1891, published the Encyclical Rerum novarum, in which, the false theories of the Socialists having been refuted, he wisely explains the means by which the miserable condition of workers can be remedied by the united forces of the Church, the State, and private associations.

2. Confirmation. This Letter, kindly received not only by Catholics but also by experts in social matters of all nations, was the beginning of a social restoration which perseveres up to this

point and advances day by day. Pius X entered upon the same way, who, in the Motu proprio of Sept. 18, 1903, published a summary not only of the Encyclical Rerum novarum but also of other documents published by his predecessor, which would be, as it were, the norm of Catholic doctrine and action in social matters. Benedict XV also declared several times that Leo XIII's Encyclicals on social matters are, as it were, the great charter according to which social questions ought to be solved.[1] Nor does Pius XI think otherwise, who, while he ruled the Milanese church, handed down the same principles concerning social matters as Leo XIII,[2] and, hardly raised to the Chair of Peter, not only praised associations which follow the doctrine of Leo XIII,[1] but, by the voice of Card. Gasparri, proposed the same Encyclical as a summary of Catholic doctrine concerning social matters.[2]

[1] Thus, on March 10, 1919, kindly receiving the Society of workers of St. Joachim, he commended the Encyclical Rerum novarum thus: "Time has neither weakened its force nor diminished its timeliness... We would desire that this admirable document were always before the eyes as the great charter, and that by its light problems related to the worker question were always examined and resolved."

[2] Cf. La Documentation Catholique, Feb. 25, 1922, p. 456-457.

[1] Thus he praised the Society called Action Populaire, which the Fathers of the Society of Jesus founded for promoting the application of the principles explained in the Encyclical Rerum novarum; and also La Semaine Sociale, which each year in the principal cities of France explains doctrine consonant with this Encyclical.

[2] La Croix, April 14, 1922.

Therefore various associations founded in the Catholic world embrace this doctrine and strive to apply it; thus in France L'Oeuvre des Cercles Catholiques, L'Association Catholique de la Jeunesse francaise, and also colleges of workers, but especially La Confederation francaise des Travailleurs chretiens, concerning which we treated in the Supplement for France, p. 251. Therefore to have the integral text of the Encyclical before the eyes, to read and meditate on it, will be no less pleasant than useful.

II. Division Of The Encyclical.

That the order followed in this Encyclical may be better perceived, we place below a synoptic table.

Exordium: motive for writing concerning the condition of workers (1-2).[3]

[3] We refer the reader to the numbers which we have added to the text; moreover we print certain words in italics, so that the divisions may appear more clearly.

State of the question: three causes of the worse lot of workers (3).

First Part: The solution of Socialism overturning private dominion is:

1. inept or unequal to making the lot of workers better (4-5);
2. unjust toward individuals, whom it deprives of the natural right of possessing (6-10); toward families, which cannot be preserved without transmission of goods (11);
3. subversive, since it nourishes discords, idleness, misery (12).

Conclusion of the first part (13).

Second Part: the Christian religion brings the true remedy, by the united forces of the Church, the State, and Associations:

1. The Church furnishes doctrine, precepts, institutions: - Doctrine: concerning the inequality of men and the necessity of arduous labor (15); concerning the necessity of cooperation between masters and workers (16). - Precepts: of justice, whether for workers or for masters (17-18); of charity, by which fraternal relations between both are fostered (19-22). - Institutions, by which she enlightens and strengthens minds and renews societies (23), and provides for bodily necessities indirectly and directly (24-25).
2. The State fosters the general prosperity (26); takes care especially of workers (27-28); promotes good morals and religion (29-30); vindicates rights, especially those of the poor (31); protects the rights of those who possess, by preventing useless cessations from work (32-33); safeguards the spiritual rights of workers (34), and also their bodily rights, especially a just wage; does not impose burdensome taxes (36-37).
3. Associations of masters and workers: the right of association is natural, nor are religious associations to be kept from it (38-40); Catholic associations are most useful and to be praised (41-42); but they ought to be rightly ordered, especially in their end, namely the perfection of piety and morals (43-44).

Peroration.

On The Condition Of Workers. — Exordium.

Marginal summary: The contest concerning economic matters, arisen from a manifold source, moves the Pontiff to write concerning the condition of workers.

1. Once the desire for new things had been stirred up, which indeed for a long time has disturbed states, it was going to happen that zeal for changes would at some time flow down from political questions into the kindred genus of economic matters. - In reality, 1) new increases of industry and the arts going by new ways; 2) changed mutual relations of masters and wage-earners; 3) an abundance of riches in a small number, want in the multitude; 4) greater confidence of workers concerning themselves, and a closer union among themselves, and besides morals turned toward worse things, have caused the contest to break forth. How great the importance of the matters involved in this contest is appears from this, that it holds minds suspended in sharp expectation: finally it exercises the talents of the learned, the councils of the prudent, the assemblies of the people, the judgment of legislators, the counsels of princes, so that now no cause is found so great which holds the zeal of men more vehemently. - Therefore, the cause of the Church and the common safety having been proposed to Us, as we have been accustomed to do elsewhere, Venerable Brothers, by letters given to you concerning political rule, concerning human liberty, concerning the Christian constitution of states, and other matters of a not dissimilar kind, which seemed opportune for refuting the fallacies of opinions, so now for the same causes We have judged that the same thing must be done concerning the condition of workers.[1] - This kind of argument We have already touched upon more than once by occasion: nevertheless in these Letters the consciousness of the apostolic

office warns Us to treat the whole question by set purpose, so that principles may stand out by whose help, as truth and equity demand, the conflict may be settled.

[1] Leo XIII here does not treat of all social questions, but only of relations between workers and masters.

Marginal summary: A difficult and at the same time dangerous matter.

2. The cause is difficult to untangle, nor is it empty of danger. For it is arduous to measure the rights and duties by which it is proper that the wealthy and proletarians, those who contribute capital and those who contribute labor, be held together among themselves. But the contention is dangerous, since it is commonly turned aside by turbulent and clever men for perverting the judgment of truth and stirring up the multitude seditiously. However it may be, We plainly see, as all agree, that men of the lowest lot must be consulted quickly and opportunely, since the greatest part dwell unworthily in a miserable and calamitous fortune.

Marginal summary: State of the question. Three causes of the worse lot of workers.

3. For the old guilds of craftsmen having been destroyed in the previous century, and no protection having been substituted in their place, 1) since public institutions and laws themselves had put off ancestral religion, it gradually came about that time handed workers over, solitary and defenseless, to the inhumanity of masters and the unbridled greed of competitors. 2) Voracious usury increased the evil, which, although condemned more than once by the judgment of the Church, nevertheless is exercised by greedy and gain-seeking men under another appearance; 3) to this are added both the hiring of works and almost all commerce of things reduced into the power of a few, so that a few wealthy and exceedingly rich men have imposed an almost servile yoke upon the infinite multitude of proletarians.

First Negative Part. — The Cure Of The Evil Is Not To Be Sought From Socialism.

Marginal summary: The method of the Socialists is 1. inept, 2. unjust, 3. subversive.

4. For the healing of this evil, the Socialists indeed, having stirred up the envy of the needy against the wealthy, contend that private possessions of goods must be overturned, and in place of them the individual goods of all be made common, with men who either preside over the municipality or administer the whole republic procuring them. By a transfer of goods of this sort from private persons to the common, they think they can remedy the present evil by dividing things and advantages equally among citizens. But their plan is so unequal to settling the contention that it afflicts the very class of workers with inconvenience; and the same is besides very unjust, because it brings force upon legitimate possessors, perverts the duties of the republic, and thoroughly confuses states.

Marginal summary: 1. It is inept, for by abolishing the right of private dominion it removes the hope of acquiring a better lot.

5. Surely, as is easy to see, of the very labor which those undertake who are engaged in some gainful art, this of itself is the cause, and this is the end to which the craftsman most nearly

looks: to acquire property for himself and possess it by private right as his own and proper. For if he lends his strength, if his industry, to another, he lends them for this cause, that he may obtain things necessary for livelihood and support; and therefore from the labor given he seeks for himself a true and perfect right not only of demanding wages, but also of placing them as he wills. Therefore if by frugality of expenses he himself has saved anything, and, so that its custody may be safer, has placed the fruit of his frugality in an estate, certainly an estate of this sort is nothing other than the wages themselves having put on another appearance; and therefore the land thus purchased by the worker will be in his power just as much as the wages gained by labor. But in this plainly, as is easily understood, consists dominion of things whether movable or solid. Therefore in this, that Socialists strive to transfer the goods of private persons to the common, they make the condition of all wage-earners worse, since, the liberty of investing wages having been taken away, by that very fact they despoil them of the hope and faculty of increasing family property and obtaining advantages for themselves.

Marginal summary: 2. It is unjust, for the right of private dominion is natural. This right is shown: a) to belong to individuals; 1) this difference exists between beasts and man, that the former enjoy only the use of corporeal things; but man, as a participant in reason, needs stable possession.

6. But, what is greater, they propose a remedy openly fighting with justice, because to possess things privately as one's own is a right given to man by nature. - In reality, in this matter also there is the greatest difference between man and the other kinds of living creatures. For beasts do not govern themselves, but are ruled and governed by a twofold instinct of nature: these keep watchful in them the faculty of acting and suitably unfold their powers, and also stir up and determine their individual movements. By one instinct they are led to defending themselves and life, by the other to the preservation of their kind. But they conveniently obtain each of these things by the use of those things which are present and are present to them; nor indeed could they advance further, because they are moved only by sense and by singular things perceived by sense. - Far different is the nature of man. In him there is at the same time the whole and perfect force of living nature, and therefore from this part it is granted to man, certainly no less than to every kind of living creatures, that he enjoy the goods of corporeal things. But living nature, however fully possessed, is so far from circumscribing human nature that it is much inferior to human nature, and is born to serve and obey this. What stands out and excels in us, what grants to man that he be man and differ from beasts by an entire genus, is mind or reason. And on account of this cause, because only this animal is participant in reason, it is necessary to attribute goods to man not only for use, which is common to all living creatures, but also to be possessed by stable and perpetual right, and not only those things which are consumed by use, but also those which remain while we use them.
7. This appears still more if the nature of men in itself is regarded more deeply. For since man by reason comprehends innumerable things, and joins present things to future things and connects them, and since he is himself master of his actions, therefore under the eternal law, under the power of God governing all things most providently, he governs himself by the providence of his own counsel: wherefore it is in his power to choose things which he judges most suitable for consulting for himself not only in the present, but also for the remaining time. From this it follows that in man there ought to be dominion not only of the fruits of the

earth, but of the earth itself, because he sees that from the produce of the earth things necessary for himself for future time are supplied. The necessities of each man have, as it were, perpetual returns, so that when they have been fulfilled today, they command new things for tomorrow. Therefore nature ought to have given to man some thing stable and perpetually enduring, whence perpetuity of aid could be expected. But nothing can furnish perpetuity of that sort except the earth with its abundances.

8. Nor is there reason why the providence of the republic should be introduced: for man is older than the republic; wherefore he ought by nature to have had his own right to protect life and body before any state had come together. - But that God gave the earth to the universal race of men for use and enjoyment, this indeed can in no way be opposed to private possessions. For God is said to have given the earth to the human race in common, not because he willed promiscuous dominion of it among all, but because he assigned no part to anyone to possess, the description of private possessions being permitted to the industry of men and to the institutions of peoples. Moreover, however the earth is distributed among private persons, it does not cease to serve the common utility of all, since no mortal is without being nourished by that which fields bring forth. Those who lack property supply it by labor; so that it can truly be affirmed that the whole manner of obtaining livelihood and support consists in labor, which one spends either on his own land, or in some laborious art, whose wages are finally drawn from no other source than from the manifold produce of the earth and are exchanged with it.

Marginal summary: This pact no less makes the earth serve the universe.

9. From this matter it is again brought about that private possessions are plainly according to nature. For the earth indeed pours forth with great generosity those things which are required chiefly for preserving and perfecting life, but it could not pour them forth of itself without the cultivation and care of men. Now since in preparing the goods of nature man expends the industry of the mind and the powers of the body, by that very fact he applies to himself that part of corporeal nature which he himself has cultivated, in which he has left impressed, as it were, a certain form of his person; so that it ought to be altogether right that this part be possessed by him as his own, nor be licit for anyone in any way to violate his right.

So clear is the force of these arguments that it seems wonderful that certain restorers of obsolete opinions dissent: they indeed concede to the private man the use of soil and the various fruits of estates; but they plainly deny that there is a right for him to possess as owner either the soil on which he has built, or the estate which he has cultivated. When they deny this, they do not see that man will be defrauded of things obtained by his labor. For a field subdued by the hand and art of the cultivator greatly changes its condition: from wild it becomes fruitful, from barren fertile. But those things by which it has been made better so adhere to the soil and are thoroughly mingled with it that for the greatest part they can in no way be separated from the soil. But whether justice would suffer that anyone possess and enjoy that on which another has sweated? As effects follow the cause by which they have been effected, so it is right that the fruit of labor belong to those very ones who have furnished the labor.

Marginal summary: 3) The whole human race has recognized this; 4) civil laws confirm it; 5) divine laws confirm it.

10. Therefore deservedly the universality of the human race, scarcely moved at all by the dissenting opinions of a few, and studiously looking upon nature, has found in the very law of nature the foundation of the partition of goods and has consecrated private possessions, as most congruent with the nature of men and with peaceful and tranquil living together, by the practice of all centuries. - But civil laws, which, when they are just, draw their virtue from the natural law itself, confirm that right of which we speak and defend it even by employing force. - The authority of divine laws has sanctioned the same, which most gravely forbid even to desire another's goods. Thou shalt not covet thy neighbor's wife: not house, nor field, nor maid-servant, nor ox, nor ass, and all things which are his.[1]

[1] Deut., V, 21.

Marginal summary: b) The right of possessing belongs to the domestic family. 1) The right of founding a family is older than the state.

11. But rights of this sort, which are in individual men, are understood to be much stronger if they are regarded as apt and connected with the duties of men in domestic life together. - In choosing a manner of life there is no doubt that it lies in the power and judgment of individuals to prefer either one, either to follow the counsel of Jesus Christ concerning virginity, or to bind oneself by the bond of marriage. No law of men can take away from man the natural and primitive right of marriage, or in any way circumscribe the principal cause of nuptials established at the beginning by the authority of God. Increase and multiply.[1] Behold therefore the family, or domestic society, a very small one indeed, but a true society, and the same older than every state; for which reason it is necessary that it have certain rights and duties of its own, which by no means depend upon the republic.

[1] Gen., I, 28.

Therefore what we have demonstrated, that the right of dominion is attributed by nature to individual persons, ought to be transferred to man insofar as he is head of the family: indeed that right is so much more valid as the human person comprehends more things in domestic life together. It is a most holy law of nature that the father of the family protect by food and every support those whom he himself has procreated: and the same is deduced from nature itself, that he should wish to acquire and prepare for his children, since they refer and in some way produce the person of the father, that from which they can honestly defend themselves in the doubtful course of life against miserable fortune. But he can accomplish this in no other way except by the possession of fruitful things, which he may transmit to his children by inheritance.

Marginal summary: 2) The father of a family protects children especially by hereditary transmission of goods. 3) The rights of the family are equal to, indeed greater than, the rights of civil society, because prior. Therefore the State ought not to disturb families by overturning property.

As we have recalled, in the same way as the state, the family is a society of true name, which is ruled by its own power, that is, paternal. Wherefore, while the limits prescribed by its proximate cause are surely preserved, in choosing and employing things necessary for its safety and just liberty, the family obtains at least rights equal to civil society. We have said at least equal, because since domestic life together is prior both in thought and in fact to civil union, it follows that its rights and duties are also

prior and more natural. But if citizens, if families, having been made participants of human community and society, found in the republic offense instead of assistance, diminution of their right instead of protection, society would rather be something to be despised than desired.

Therefore to will that civil power should penetrate at its own judgment even to the inmost things of homes is a great and pernicious error. - Certainly if perhaps some family is placed in the greatest difficulty of affairs and destitution of counsel, so that it can in no way extricate itself, it is right that public aid be given to extreme matters: for individual families are a certain part of the state. And in like manner, if somewhere within domestic walls there has existed a grave disturbance of mutual rights, let the public power vindicate to each one his right; for this is not to seize to itself the rights of citizens, but to protect and strengthen them by just and due guardianship. Yet those who preside over public affairs must stand here: nature does not permit them to exceed these limits. Paternal power is of such a kind that it can neither be extinguished nor absorbed by the republic, because it has the same principle in common with human life itself. Children are something of the father, and, as it were, a certain amplification of the paternal person: and, if we wish to speak properly, not through themselves by themselves, but through the domestic community in which they were generated, they enter and participate in civil society. And on this very account, because children are naturally something of the father... before they have the use of free will, they are contained under the care of the parents.[1] Therefore what the Socialists introduce, the providence of the republic, after the providence of parents has been set aside, they do against natural justice and dissolve the structure of homes.

[1] St. Thomas, II-II, Question X, art. XII.

Marginal summary: 3. The plan of the Socialists is subversive of order: it nourishes discords, idleness, misery.

12. And besides injustice, it also appears too clearly what change and disturbance of all orders would be, and what hard and hateful servitude of citizens would follow. An approach would be opened to mutual envy, to detractions and discords: the stimuli of the talent and skill of individuals having been taken away, the very sources of riches would necessarily dry up: and that equality which they feign in thought would in reality be nothing other than the equally miserable and ignoble condition of all men, without distinction.

Marginal summary: Conclusion.

13. From all these things it is clear that that doctrine of Socialism concerning reducing possessions to common ownership must be altogether repudiated, because it harms those very ones whom it is to help, repugns to the natural rights of individuals, and disturbs the duties of the republic and the common tranquility. Therefore when relief of the people is sought, this must be held first as in the place of a foundation: private possessions must be preserved inviolate. With this posited, We shall explain whence the remedy which is sought is to be sought.

Second Positive Part. — Whence The Remedy Is To Be Sought.

Marginal summary: Certainly the exertion of civil power and of each order is required; but, if the Church is set aside, the work of men will be empty.

14. We approach the argument confidently and plainly by Our right; for a cause is being treated for which no probable outcome indeed can be found unless religion and the Church are summoned. But since both the guardianship of religion and the dispensation of those things which are in the power of the Church are especially in Our hands, We would seem to have neglected Our duty by silence.

Certainly so great a cause desires the work and exertion of others also: We understand the princes of the republic, masters and the wealthy, and finally the proletarians themselves, for whom the contention is; yet without hesitation We affirm this, that the efforts of men will be empty if the Church is set aside. Namely, the Church is the one which brings forth from the Gospel teachings by whose virtue the contest can either be wholly settled, or certainly made milder by harshness having been taken away; the same is the one which strives not only to instruct the mind, but to rule the life and morals of individuals by her precepts; which promotes the very state of proletarians to better things by several most useful institutions; which wills and expedites that the counsels and powers of all orders be associated into this, that provision be made for the interests of workers as conveniently as possible; and thinks it proper that the very laws and authority of the republic be employed for this matter, yet with reason and measure.

1. The Divine Remedy: The Church.

Marginal summary: By doctrine, precepts, and institutions.

Marginal summary: A) Doctrine. For the Church teaches: a) that among men by nature itself there are various inequalities; b) bodily labor, pleasant in the state of innocence, became arduous after the fall; c) the remaining hardships cannot be wholly taken away.

15. Therefore let this be established in the first place: the human condition must be borne; the lowest cannot be made equal to the highest in civil society. Socialists indeed agitate this: but every contention against the nature of things is vain. For in men there are the greatest and very many natural dissimilarities; the talents of all are not equal, nor skill, nor health, nor strength: an unequal fortune follows spontaneously from the necessary difference of these things. And this is plainly adapted to the uses both of private persons and of the community; for common life needs varied faculty and diverse functions for managing affairs; and men are chiefly impelled to fulfilling these functions by the difference of each one's family property. - And as to bodily labor, in the very state of innocence man was not going to be wholly idle: but what the will would then have freely chosen for delight of the soul, the necessity of expiating fault afterward compelled it to undergo not without a sense of trouble. Cursed is the earth in thy work: in labors thou shalt eat from it all the days of thy life.[1] - And in like manner there will be no end of the remaining hardships on earth, because the consequences of sin are harsh to tolerate, hard, difficult: and they must accompany man even to the last of life. Therefore to suffer and endure is human, and although men may experience and try all things, by no force, by no art, will they be able utterly to tear inconveniences of this sort from human life together. If any profess that they can do this, if they promise to the miserable people a life free from all pain and trouble, and filled with rest and perpetual pleasures, indeed they impose upon the people and contrive a fraud, sometime to break forth into evils greater than the present. The

best thing to be done is to look upon human affairs as they are, and at the same time, as We have said, to seek opportune relief for inconveniences from another source.

[1] Gen., III, 17.

Marginal summary: d) Each order is arranged by nature for harmonious cooperation.

16. In the cause of which We speak, that is the capital evil: to imagine by opinion that one order is of itself hostile to another, as though nature had prepared the wealthy and proletarians to fight among themselves in persistent duel. This so abhors reason and truth that, on the contrary, it is most true that in the same way as in the body diverse members agree among themselves, whence there exists that temperament of condition which you might rightly call symmetry, so in the same way nature has commanded in the state that those twin classes agree among themselves harmoniously, and answer to each other suitably for equilibrium. Altogether the one needs the other: capital cannot subsist without labor, nor labor without capital. Concord begets the beauty and order of things: on the contrary, from the perpetuity of contest there must arise confusion with wild savagery. But now for settling the contest and cutting away its very roots, there is a marvelous force of Christian institutions, and that a manifold one.

Marginal summary: B) By precepts: a) recommending duties of justice, 1) some to proletarians.

17. And first the whole discipline of religion, of which the Church is interpreter and guardian, can greatly compose and join the wealthy and proletarians to one another, namely by recalling each order to mutual duties, and especially to those which are drawn from justice. From these duties, those touch the proletarian and worker: to render wholly and faithfully that work which has been freely and equitably agreed upon; in no way to harm property, not to violate the person of masters; in defending their own interests to abstain from force, and never to put on sedition; nor to mix with shameful men, artfully tossing forth immoderate hopes and great promises, which generally has useless repentance and consequent ruins of fortunes.

Marginal summary: 2) Others to masters: a) the human and Christian dignity in the worker is to be reverenced; b) a just wage is to be paid in full, without any fraud; c) the savings of proletarians are to be fostered.

18. But these things regard the rich and masters: workers are not to be regarded in the place of slaves; it is equitable that in them the dignity of the person be reverenced, certainly ennobled by that which is called the Christian character. Gainful arts, if the reason of nature, if Christian philosophy is heard, are not a shame to man, but a dignity, because they furnish an honest power of sustaining life. That truly is shameful and inhuman, to abuse men as things for profit, and to make them of no more value than the amount by which they are strong in sinews and powers. Likewise it is prescribed that account must be had of religion and of the goods of the soul in proletarians. Wherefore it is the part of masters to effect that the worker have a suitable space of time for piety; not to give the man over to the seductions of corruptions and the enticements of sinning; nor in any way to lead him away from domestic care and the zeal of frugality. Likewise not to impose more work than his strength can bear, nor that kind which disagrees with age and sex. - But among the greatest duties of masters this stands out: to provide what is just to each one. Certainly for the measure of the wage to be established by

equity, several causes must be considered; but generally let the wealthy and employers remember that neither divine nor human laws permit pressing the needy and miserable for the sake of one's own profit, and seizing gain from another's want. But to defraud anyone of the wage owed is a great crime, which by its cry calls down avenging wraths from heaven. Behold the hire of the laborers... which has been kept back by you, cries out: and the cry of them has entered into the ears of the Lord of Sabaoth.[1] - Finally the wealthy must religiously take care not to harm the savings of proletarians by force, deceit, or usurious arts: and this the more because they are not sufficiently fortified against injuries and powerlessness, and their property, the smaller it is, must be held the more sacred.

[1] James, V, 4.

Would not obedience to these laws be able, even by itself alone, to extinguish the force and causes of dissension?

Marginal summary: B) By precepts of charity the Church joins each order. For she teaches: 1) the present life will be succeeded by an eternal one; 2) for acquiring this, the legitimate use of earthly goods is useful; 3) likewise labors patiently tolerated after the example of Christ.

19. But the Church, with Jesus Christ as teacher and leader, nevertheless pursues greater things: namely, by prescribing something more perfect, she looks to this, that she join one order to the other by the nearest proximity and friendship. - We cannot understand and estimate mortal things according to truth unless the soul has looked down upon the other life, and that immortal one: and if this is taken away, the form and true notion of the honorable would immediately perish; indeed this whole universe of things would pass into a mystery accessible to no investigation of men. Therefore, what we learned by nature itself admonishing, the same is a Christian dogma, upon which the whole reason and constitution of religion rests as upon its principal foundation: when we have departed from this life, then truly we shall live. For God did not generate man for these fragile and passing things, but for heavenly and eternal things, and gave us earth as a place of exile, not as a seat for dwelling. Whether you abound in riches and other things which are called goods, or lack them, it is of no importance for eternal beatitude: but how you use them is of the greatest importance. By his abundant redemption Jesus Christ by no means took away the various hardships with which mortal life is almost woven, but he transformed them into incentives of virtues and material of meriting well: so plainly that no mortal can grasp eternal rewards unless he enters upon the bloody footsteps of Jesus Christ. If we suffer, we shall also reign.[1] By labors and torments voluntarily undertaken, he wonderfully softened the force of torments and labors: and not only by example, but by his grace and by the hope of perpetual reward proposed, he made the endurance of sorrows easier: for that which is at present momentary and light in our tribulation works above measure exceedingly an eternal weight of glory in us.[2]

[1] II Tim., II, 12.

[2] II Cor., IV, 17.

Marginal summary: The Church moreover teaches the rich: a) that wealth more often hinders than helps the acquiring of eternal happiness; b) that goods, although justly possessed, are to be communicated for the use of the

needy.

Therefore the fortunate are warned that freedom from sorrow does not bring anything, nor do riches profit anything toward the happiness of the eternal age, but rather they hinder;[3] that the unusual threats of Jesus Christ ought to be a terror to the wealthy;[4] that an account concerning the use of fortunes will someday have to be rendered most strictly to God the Judge.

[3] Matt., XIX, 23-24.

[4] Luke, VI, 24-25.

20. Concerning the use of wealth itself there is an excellent and most important doctrine, which philosophy began, but the Church has handed down plainly perfected, and the same causes to be held not only in knowledge but in morals. The foundation of this doctrine is placed in this, that the just possession of money is distinguished from the just use of money. To possess goods privately, as we saw a little before, is a natural right for man: and to use that right, especially in the society of life, is not only lawful, but plainly necessary. It is licit that man possess his own things. And it is also necessary for human life.[1] But if this is asked, what kind of use of goods is necessary, the Church indeed without any doubt responds: as to this, man ought not to have exterior things as his own, but as common, so that namely he may easily communicate them in the necessity of others. Whence the Apostle says: Command the rich of this world... to give easily, to communicate.[2]

[1] II-II, Question LXVI, a. II.

[2] II-II, Question LXV, a. 11.

Marginal summary: that is, the surplus must be communicated with the poor from charity, from love of Christ.

21. Certainly no one is commanded to help others from that which pertains to the necessary uses both of himself and of his own; indeed not even to hand over to others that which he himself needs for preserving that which befits and becomes his person: for no one ought to live unbecomingly.[3] But where enough has been given to necessity and decorum, it is a duty to gratify the needy from that which remains. What remains, give as alms.[4] These are not duties of justice, except in extreme matters, but of Christian charity, which certainly there is no right of seeking by legal action. But the law and judgment of Christ God precedes the laws and judgments of men, who in many ways counsels the custom of giving: it is more blessed to give than to receive;[5] and he will judge beneficence conferred upon or denied to the poor just as if conferred upon or denied to himself. As long as you did it to one of these least of my brethren, you did it to me.[6]

[3] II-II, Question XXXII, VI.

[4] Luke, XI, 41.

[5] Acts, XX, 35.

[6] Matt., XXV, 40.

The sum of these things is this: whoever has received a greater abundance of goods by the gift of God, whether they are of the body and external, or of the soul, has received it for this cause, that he

may employ it for his own perfection and likewise, as a minister of divine providence, for the utilities of others. Therefore he who has talent should take care altogether that he is not silent: he who has abundance of things, let him watch that he does not grow torpid from the largeness of mercy: he who has an art by which he is ruled, let him greatly strive to share its use and utility with his neighbor.[7]

[7] St. Gregory the Great, in Evang. Hom. X, n. 7.

Marginal summary: The Church finally teaches those lacking goods of fortune: a) that poverty is a permanent state which the Son of God embraced; that riches are placed in virtues; c) that the heart of God has a more propense will toward the poor. By this doctrine the souls of each order are joined.

22. But those who lack goods of fortune are thoroughly taught by the Church that poverty is not held as a disgrace, in God's judgment, nor is it to be shameful that livelihood is sought by labor. And Christ the Lord confirmed this by deed and fact, who for the salvation of men became poor, although he was rich;[8] and although he was the Son of God and God himself, nevertheless he wished to seem and be thought the son of a craftsman: indeed he did not refuse to consume a great part of his life in the work of a craftsman. Is not this the craftsman, the son of Mary?[9] To those looking upon the divinity of this example, these things are more easily understood: that the true dignity and excellence of man is placed in morals, that is, in virtue; but that virtue is the common patrimony of mortals, equally obtainable by the lowest and the highest, by the rich and proletarians; nor will anything else than virtues and merits, wherever they are found, be followed by the reward of eternal beatitude. Indeed the will of God himself seems more inclined toward the class of the calamitous: for Jesus Christ calls the poor blessed;[1] he lovingly invites to himself, for the sake of solace, whoever are in labor and mourning;[2] he embraces the weak and those vexed by injury with particular charity. By knowledge of these things the swelling soul in the fortunate is easily depressed, in those in distress the dejected soul is lifted up: the former are bent to facility, the latter to modesty. Thus the desired interval of pride is made shorter, nor will it be obtained with difficulty that the wills of each order, with hands joined in friendship, be joined together.

[8] II Cor., VIII, 9.

[9] Mark, VI, 3.

[1] Matt., V, 3: Blessed are the poor in spirit.

[2] Matt., XI, 28: Come to me all you who labor and are burdened, and I will refresh you.

Marginal summary: Nor only justice: Christian precepts beget fraternal love, since there is one Creator, one Redeemer, one end, one treasury of graces.

Yet, if they obey Christian precepts, it is too little for friendship; even fraternal love will join them to one another. For they will feel and understand that plainly all men were created by God as a common parent: that all tend to the same end of goods, who is God himself, who alone can affect both men and Angels with perfect and absolute beatitude; likewise that individuals have equally been redeemed by the benefit of Jesus Christ and vindicated into the dignity of children of God, so that they are contained by a plainly fraternal bond both among themselves and also with Christ the Lord, the firstborn among many brothers. Likewise the goods of nature and the gifts of divine grace belong commonly and promiscuously to the universal race of men, nor is anyone made disinherited of

heavenly goods except one unworthy. But if sons, also heirs: heirs indeed of God, and co-heirs with Christ.[3]

[3] Rom., VIII, 17.

Such is the form of duties and rights which Christian philosophy professes. Would not every contest seem about to be quieted in a very short time, if that prevailed in civil life together?

Marginal summary: C) The Church applies the remedy by her institutions. a) She instructs souls by directing the intellect and the will.

23. Finally, the Church does not have it enough to show the way of finding a cure, but applies medicine by her own hand. For she is wholly intent upon this, that she cultivate and instruct men according to her discipline and doctrine: and she takes care that the most salutary streams of this doctrine be brought down as widely as possible through the work of Bishops and the Clergy. Then she strives to penetrate into souls and bend wills, so that they allow themselves to be ruled and governed by the discipline of divine precepts. And in this part, which is principal and of very great moment, because the sum of utilities and the whole cause consists in it, the Church indeed alone can do the most. For the instruments which she uses for moving souls were handed down to her by Jesus Christ for this very cause, and have a divinely implanted power. Instruments of this sort alone are those which can aptly touch the innermost depths of the heart, and lead man to show himself obedient to duty, to rule the movements of the desiring soul, to love God and neighbors by a singular and supreme charity, and courageously to break through all things which impede the course of virtue.

It is enough in this kind to recall briefly in thought the examples of the ancients. We commemorate matters and facts which have no doubt: namely, that the civil community of men was fundamentally renewed by Christian institutions; and that by the virtue of this renewal the human race was advanced to better things, indeed recalled from destruction to life, and increased with so great a perfection that none greater had existed before, nor will any greater exist in all following ages. Finally, Jesus Christ is the principle and also the end of these benefits: as they set out from him, so all things are to be referred to him. Namely, once the light of the Gospel had been received, when the world had learned the great mystery of the Incarnate Word and of the redemption of men, the life of Jesus Christ, God and man, penetrated states and imbued them entirely with his faith, precepts, and laws. Wherefore if a remedy is to be applied to the society of the human race, restoration of Christian life and institutions alone will remedy it. For concerning societies falling apart this is most rightly prescribed, that they must be recalled to their origins when they wish to be restored. For this is the perfection of all associations, to labor for and obtain that for the sake of which they were instituted: so that the same cause gives birth to social movements and acts which gave birth to the society. Wherefore to decline from the institution is corruption: to return to the institution is healing. And we say this most truly in the same way concerning the whole body of the republic and concerning that order of citizens who sustain life by labor, which is by far the greatest multitude.

Marginal summary: In Christ, societies once restored must return to him when falling apart.

Marginal summary: b) Nor has the Church neglected bodily life, especially of proletarians. 1) Indirectly, by ruling morals.

24. Nor however is it to be thought that the cares of the Church are so wholly fixed on cultivating souls that she neglects those things which pertain to mortal and earthly life. Concerning proletarians by name, she wills and contends that they emerge from a most miserable state and obtain better fortune. And to this she brings no middling work by this very fact, that she calls and instructs men to virtue. For Christian morals, where they are preserved intact, of themselves produce some part of prosperity in external affairs, because they reconcile God, the principle and source of all goods; they restrain the twin plagues of life, which too often make man miserable in the very abundance of resources, namely excessive desire for things and thirst for pleasures;[1] finally, content with frugal support and livelihood, they supply revenue by thrift, far from vices which not only exhaust small sums of money, but even the greatest abundances, and dissipate splendid patrimonies. But besides, so that proletarians may be well, she provides directly, by instituting and fostering things which she understands to conduce to relieving their want.

[1] I Tim., VI, 10: Desire is the root of all evils.

Marginal summary: 2) Directly, by fostering institutions of every kind for relieving want.

Indeed, even in this kind of benefits, she has always so excelled that she is raised up in praise even by enemies themselves. So great was the force of mutual charity among the most ancient Christians that richer persons very often deprived themselves of their property for the sake of helping: wherefore neither... was there anyone needy among them.[1] To Deacons, instituted in order specifically for this, the Apostles gave the business of exercising the duties of daily beneficence: and Paul the Apostle, although divided by the solicitude of all the Churches, nevertheless did not hesitate to give himself to laborious journeys, so that he might personally bring alms to poorer Christians. Money of this kind, voluntarily collected by Christians in each assembly, Tertullian calls deposits of piety, because namely they were spent for feeding and burying the needy, and for boys and girls destitute of property and parents, and also for elderly household members, likewise for the shipwrecked.[2]

[1] Acts, IV, 34.

[2] Apol., II, XXXIX.

Hence that patrimony gradually arose, which the Church guarded with religious care as the family property of the needy. Indeed she procured aid for the miserable people, with shame at asking removed. For as the common parent of both the wealthy and the needy, charity having everywhere been stirred up to excellent magnitude, she founded colleges of religious associates and very many other institutions usefully, by whose help there would be almost no kind of miseries which lacked consolation.

Marginal summary: In place of this, they strive in vain to substitute legal beneficence; but the cooperation of all will profit much.

25. Today indeed many, as the heathen formerly did in the same way, pass over to accusing the Church even of this so excellent charity: in whose place it has seemed good to substitute beneficence constituted by public laws. But no human arts will be found which can supply for Christian charity, which stretches itself wholly toward the utilities of others. That virtue belongs to the Church alone, because unless it is drawn from the most sacred heart of Jesus

Christ, it exists nowhere: but whoever has departed from the Church wanders farther from Christ.

But in reality there can be no doubt that, for that which has been proposed, those aids also which are in the power of men are required. Altogether all to whom the cause pertains must tend to the same thing and labor for the same thing according to their proportionate part. This has a certain likeness with the providence which moderates the world: for generally we see that outcomes of things proceed from the conspiracy of all those causes on which they depend.

2. What Is To Be Expected From A Christian Republic In This Matter.

26. Now it is fitting to inquire what part of the remedy is to be expected from the republic. - By republic in this place We understand not the one or other form which a people uses, but the one which right reason, congruent with nature, wills, and which the documents of divine wisdom approve, which We ourselves by name have explained in the Encyclical Letters concerning the Christian constitution of states.

A) More General Considerations.

Marginal summary: a) It belongs to civil power to foster public prosperity, and therefore to consult for the good of proletarians.

Therefore those through whom the state is governed ought first to contribute work generally and universally by the whole plan of laws and institutions, namely by effecting that from the very conformation and administration of the republic prosperity, both of the community and of private persons, spontaneously flourish. For this is the function of civil prudence and the proper office of those who preside. But now these things especially make states prosperous: honesty of morals, families rightly and orderly constituted, guardianship of religion and justice, both moderate imposition and equitable partition of public burdens, increases of arts and commerce, flourishing cultivation of fields, and any other things of the same kind, which the more they are advanced with greater zeal, the better and more happily citizens will live. - Therefore by the virtue of these things it lies in the power of the rulers of the state, as to profit the other orders, so also very greatly to help the condition of proletarians: and this by their own best right, and with no suspicion of importunity: for the republic ought, from the law of its office, to consult for the common good. But the greater the abundance of advantages that will have come from this general providence, the less need there will be to try other ways for the safety of workers.

Marginal summary: b) The republic should have special care of proletarians, since they are greater in number; since they contribute no less to the common good than those who govern.

27. But this besides must be considered, which touches the matter more deeply, that the reason of the state is one, common to the highest and the lowest. For proletarians are citizens by natural right equally with the wealthy, that is, true parts, living with life, from which, families intervening, the body of the republic consists: and let this not be added, that in every city they are by far the greatest in number. Since therefore it would be utterly absurd to consult one part of citizens and neglect a part, it follows that due cares must be placed publicly in protecting the safety and advantages of the order of proletarians: if this is not done, justice prescribing to

render to each his own will be violated. Concerning which matter St. Thomas wisely says: as a part and the whole are in a certain way the same, so that which belongs to the whole in a certain way belongs to the part.[1] Therefore among not a few and not light duties of princes consulting well for the people, that stands out first, that they protect each order of citizens equally, namely by preserving inviolate that justice which is called distributive.

[1] II-II, Question LXI, a. I ad 2.

28. But although all citizens, no one excepted, must contribute something to the sum of common goods, some virile part of which spontaneously falls back upon individuals, nevertheless they can by no means contribute the same and equally. Whatever the changes may be in forms of rule, those differences in the condition of citizens will be perpetual, without which no society could exist or be thought. It is altogether necessary that certain men be found who devote themselves to the republic, who enact laws, who speak right, finally by whose counsel and authority civil businesses and military affairs are administered. Everyone sees that the parts of these men are prior and that they are to be held as primary in every people, because they devote work to the common good most nearly and in an excellent manner. But on the contrary those who are exercised in some art do not profit the state in that way, nor by the same functions: yet they too serve public utility very greatly, although less directly. Indeed since the social good ought to be of such a kind that men become better by obtaining it, it must certainly be placed chiefly in virtue.

Nevertheless to a well-constituted state belongs also the supply of bodily and external goods, whose use is necessary for the act of virtue.[1] But for producing these goods the labor of proletarians is especially efficacious and necessary, whether they exercise art and hand in fields, or in workshops. Indeed their force and efficacy in this kind is so great that it is most true that the riches of states are begotten from no other source than from the labor of workers. Equity therefore commands that care be publicly borne for the proletarian, so that from that which he brings to the common utility, he himself may receive something, so that sheltered, clothed, and safe, he may be able to endure life less grievously. Whence it follows that favor is to be shown to all things which seem in any way about to profit the condition of workers. This care is so far from harming anyone that it will rather be profitable to all, because it is entirely in the interest of the republic that those from whom such necessary goods proceed not be miserable in every way.

[1] St. Thom., De reg. Princ., I, c. XV.

Marginal summary: c) Moreover, those who preside over the republic ought to prevent or heal what otherwise cannot be healed.

29. It is not right, as We have said, that the citizen, or the family, be absorbed by the republic: it is equitable that to each be permitted his own faculty of acting with liberty, as far as can be done with the common good unharmed and without injury to anyone. Nevertheless those who command must see that they protect the community and its parts. The community indeed, since nature committed it to the supreme power to be preserved to such an extent that guardianship of public safety is not only the supreme law, but the whole cause and reason of principality; but the parts, because philosophy and likewise Christian faith agree that the

administration of the republic by nature pertains not to the utility of those to whom it is committed, but to those who have been committed. And since the faculty of commanding proceeds from God and is a certain communication of his supreme principality, it must be carried on after the example of the divine power, consulting with paternal care for individual things no less than for universal ones. Therefore if any detriment has been brought or threatens common affairs, or the interests of individual orders, which cannot be healed or prohibited in another way, it is necessary that public authority meet it.

30. But it is of interest for both public and private safety that matters be peaceful and composed: likewise that every discipline of domestic life together be directed according to the commands of God and the principles of nature; that religion be observed and cultivated; that morals flourish intact privately and publicly; that justice be held sacred, nor some be violated by others with impunity; that citizens grow strong, fit for helping and protecting the state, if the matter demands. Wherefore if at any time it happens that some disturbance threatens because of the secession of workers or works interrupted by agreement; that natural bonds of the family among proletarians are relaxed; that religion is violated in workers by not imparting sufficient convenience for duties of piety; if danger threatens in workshops to integrity of morals from mixed sex, or other pernicious invitations to sinning; or if the employer order oppresses the order of workers with unjust burdens, or afflicts them with conditions foreign to the person and human dignity; if health is harmed by immoderate work, not accommodated to sex or age, in these causes plainly the force and authority of laws must be employed within certain limits. Those limits are determined by the same cause which asks the help of the laws: namely, laws must not undertake more, nor proceed farther, than the healing of inconveniences or the repelling of danger requires.

Marginal summary: 2) Rights indeed, especially of the weak and needy, ought to be vindicated.

31. Rights indeed, in whomever they are, must be sacredly preserved, and that individuals hold what is their own, the public power ought to provide, by repelling and avenging injuries. Except that in protecting private rights themselves, account must be had chiefly of the lowest and needy. For the nation of the rich, fenced by its own protections, needs public guardianship less: the miserable common people, safe by no resources of their own, rely especially on the patronage of the republic. Wherefore the republic ought to embrace wage-earners, since they are numbered among the needy multitude, with singular care and providence.

B) These Principles Are Applied.

Marginal summary: a) That civil power may protect the rights of possessors: 1) it will restrain perverse agitators.

32. But it is fitting by name to touch upon certain things of greater moment. - The head, however, is that private possessions ought to be protected by the rule and defense of laws. And especially, amid so great an ardor of desires, the people must be contained in duty: for if to contend for better things has been granted without justice repugning, yet justice forbids taking away from another what is his, and invading the fortunes of others under the appearance of a certain absurd equality; nor does the reason of common utility itself permit it. Certainly by far the greatest part of workers prefer to acquire better things by honest labor without injury to

anyone; nevertheless not a few are numbered who, imbued with depraved opinions and desirous of new things, do this in every way, that they move disturbances and impel the rest to force. Therefore let the authority of the republic intervene, and, a bridle having been cast upon agitators, restrain corrupting arts from the morals of workers and the danger of robberies from legitimate masters.

Marginal summary: 2) it will remedy, especially by forestalling causes, collective cessation from work (strike).

33. Longer or more laborious work, and the opinion of scanty wages, not rarely give cause to craftsmen why they free themselves from work by agreement and give themselves to voluntary leisure. Publicly this common and grave inconvenience must be remedied, because this kind of cessation afflicts with damage not only employers and the workers themselves, but harms commerce and the utilities of the republic: and since it is not far from force and disturbances, it very often brings public tranquility into danger. In this matter that is more efficacious and salutary: to forestall the evil by the authority of laws, and to prohibit it from being able to break forth, with the causes removed in good time whence a conflict of masters and workers would seem about to arise.

34. In a similar way there are many things in the worker to be fortified by the protection of the republic: and first the goods of the soul. For mortal life, however good and desirable, is nevertheless not itself that last thing for which we are born; but only the way and instrument for completing the life of the soul by the seeing of truth and the love of good. The soul is what bears the expressed image and likeness of God, and in it resides that principality by which man was commanded to dominate inferior natures, and to effect that all lands and seas serve his utility. Fill the earth and subdue it: and rule over the fish of the sea and the birds of the air and all living creatures which move upon the earth.[1] All men are equal in this matter, nor is there anything by which the rich and the poor, masters and servants, princes and private persons differ: for the same Lord is of all.[2] It is licit for no one with impunity to violate the dignity of man, concerning which God himself disposes with great reverence, nor to impede the course to that perfection which is consonant with eternal life in heaven. Indeed, not even of his own accord can man in this kind be treated in a way not befitting his nature, or will to serve the servitude of the soul: for there is no question of rights concerning which it is free to man, but of duties toward God, which must be sacredly preserved.

[1] Gen., I, 28.

[2] Rom., X, 12.

Hence follows rest from works and labors through feast days as necessary. Yet let no one understand this as some greater use of inert leisure, much less of cessation such as many desire, favorable to vices and an aid to outpourings of money, but altogether of rest from works consecrated by religion. Rest joined with religion calls man away from the labors and businesses of daily life so that it recalls him to thinking on heavenly goods, and to rendering to the eternal divinity just and due worship. This especially is the nature and this the cause of rest to be taken on feast days: which God both sanctioned in the Old Testament by a principal law: Remember that thou keep holy the sabbath day;[3] and taught by his own deed, by a mysterious rest taken immediately after he had made man: He rested on the seventh day from all the work which he had done.[4]

[3] Exod., XX, 8.

[4] Gen., II, 2.

Marginal summary: 2) It will protect bodily goods.

35. With regard to the protection of the goods of the body and of external goods, first of all it is necessary to snatch miserable workers from the cruelty of greedy men, who intemperately abuse persons as things for gain. Namely, neither justice nor humanity permits that so much work be demanded that the mind become dulled by excessive labor, and at the same time the body succumb to weariness. In man, as his whole nature, so also his effective force, is circumscribed by fixed limits, beyond which it cannot go.

Marginal summary: a) by watching that, in labor, account be kept of strength and time: the more burdensome the work is, the more productive should be the rest.

That force indeed is sharpened by exercise and use, but nevertheless under this law, that it should cease acting from time to time and rest. Therefore concerning daily work, care must be taken that it not be drawn out into more hours than strength permits. But how great the intervals for resting ought to be must be judged from the various kind of work, from circumstances of times and places, and from the very health of the workers. Those whose work is to cut stone from the earth, or to dig out iron, bronze, and other things of that kind deeply hidden, their labor, because it is much greater and also burdensome to health, must be compensated by shortness of time. The seasons of the year also must be considered: because not rarely the same kind of work is easy to bear at one time, but at another either cannot be borne in any way, or cannot be borne without the greatest difficulty.

Marginal summary: b) by watching that boys do not work too early, nor women to the harm of their sex or of the home.

Finally, what a man of mature age and well strong can do and attempt, it is not equitable to demand from a woman or a boy. Indeed, concerning boys, one must take great care that the workshop not seize them before age has sufficiently strengthened body, character, and soul. For the forces breaking forth in childhood, like the greening vigor of grass, are crushed by premature agitation: from which thing all childish training will perish. Thus certain crafts are less suitably fitting for women, born for domestic works: which works indeed greatly protect modesty in the female sex, and by nature answer to the education of children and the prosperity of the family. But universally let it be established that so much leisure is to be granted to workers as may compensate for the strength consumed by labor; because cessation ought to restore strength worn down by use. In every obligation which is mutually contracted by masters and craftsmen, this condition is always either written in or tacit, that provision be made for both kinds of rest; for it is not honest to agree otherwise, because it is lawful neither to demand from anyone, nor to promise, neglect of the duties which bind man either to God or to himself.

Marginal summary: c) by watching that labor not be deprived of just wage.

36. Here We touch upon a matter of sufficiently great importance: it is necessary that it be rightly understood, lest one sin toward either side. Namely the measure of wage is defined by free consent: and thus the master of the thing, once the wage agreed upon has been paid, would

seem to have freed his pledge and to owe nothing further. Then only would it be done unjustly, if either the master refused to pay the full price, or the craftsman refused to render the whole of the pledged works: for these causes it can be right for political power to intervene, that each one have his right unharmed, but for no other causes. - A fair judge of things will not easily, nor wholly, assent to this argument, because it is not absolute in all its parts: a certain moment of reason of greatest weight is lacking. For to work is this: to exercise oneself for the sake of acquiring things which are for the various uses of life, and especially necessary for the protection of oneself. In the sweat of thy face thou shalt eat bread.[1]

[1] Gen., III, 19.

Marginal summary: Labor, instituted for procuring sustenance for life, includes a twofold note: one of personality; another of necessity, whereby labor is necessary for sustaining life itself.

And therefore labor has, as it were, two marks naturally implanted in man: namely that it is personal, because the acting force inheres in the person, and is altogether proper to him by whom it is exercised, and for whose utility it is born; then, that it is necessary, for this cause, that the fruit of labors is needed by man for preserving life: but nature commands most of all that life itself be preserved. Now, if labor is considered only from that part by which it is personal, there is no doubt that it is within the worker's power to define the measure of the agreed wage more narrowly; for just as he gives his work by will, so also by will he can be content with a slender wage for his work, or even with none at all.

But a far different judgment must be made if, with the reason of personality, there is joined the reason of necessity, separable from it in thought indeed, but not in reality. In fact, to remain in life is a common duty for individuals, and it is a crime to fail in it. Hence there necessarily arises the right of finding things by which life is sustained: and for each person, nothing supplies the faculty of these things except wages obtained by labor. Therefore let it be granted that worker and employer freely consent to the same agreement, and particularly to the measure of wage; nevertheless there is always something underlying it from natural justice, and this is greater and older than the free will of the contracting parties, namely, that the wage ought not to be unequal to supporting a worker who is frugal indeed and well-moraled. But if the worker, compelled by necessity or moved by fear of a worse evil, accepts a harsher condition which, even if he does not will it, must be accepted, because it is imposed by the master or by the contractor of works, this indeed is to undergo force, against which justice cries out.

Nevertheless in these and similar causes, such as how many hours must be worked in each kind of craft, by what protections health must chiefly be guarded in workshops, lest the magistrate thrust himself in too importunately, especially since circumstances of things, times, and places are so varied, it will be better to reserve these matters to the judgment of the associations, of which We shall speak below, or to enter upon another way by which the interests of wage-earners may be safe, as is proper, with the protection and defense of the republic added if the matter demands.

Marginal summary: 3) By procuring that workers, studying thrift, may arrive at moderate property.

37. If the worker receives a wage sufficiently ample that by it he can conveniently protect himself, his wife, and his children, he will easily study thrift, if he is wise, and will effect what nature

itself seems to advise, that, expenses being deducted, something may also remain, by which it may be permitted him to arrive at a moderate property. For we have seen that the cause which is being treated cannot be settled by an efficacious reason unless this is assumed and established: that the right of private goods ought to be sacred. Wherefore the laws ought to favor this right, and, so far as possible, provide that very many from the multitude should prefer to have property. - When this has been done, excellent advantages will follow.

Marginal summary: From this several goods will follow: a more equitable distribution of goods;

And first, certainly, a more equitable distribution of goods. For the force of civil changes has divided cities into two classes of citizens, with an immense difference interposed between each. On one side is a faction most powerful because very rich: since it alone possesses the whole kind of works and commerce, it draws every productive faculty of resources to its own advantages and interests, and has no little power in the very administration of the republic. On the other side is a needy and weak multitude, with an embittered mind and always ready for disturbances. Now if the industry of the people is aroused toward the hope of acquiring something which is contained in land, it will gradually happen that one order becomes close to the other, with the difference between the greatest riches and the greatest poverty removed.

Marginal summary: a greater abundance of things which the earth produces;

Besides, there will be a greater abundance of the things which the earth brings forth. For men, when they know that they are laboring on what is their own, apply eagerness and far greater zeal: indeed they learn altogether to love the land cultivated by their own hand, whence they expect not only food, but also a certain abundance both for themselves and for their own. No one fails to see how greatly this eagerness of will contributes to the fertility of fruits, and to increasing the riches of the state.

Marginal summary: the faculty for citizens of leading a happy life in their fatherland.

From this a third advantage will flow, that men may easily be retained in the state in which they were born and received into the light: for they would not exchange their fatherland for a foreign region, if the fatherland gave them a tolerable faculty of spending life.

Marginal summary: To obtain these things, public authority should be moderate in determining taxes.

Yet these advantages cannot be reached except on this condition, that private property not be exhausted by the enormity of taxes and imposts. For since the right of possessing goods privately has not been given by the law of men but by nature, public authority cannot abolish it, but only moderate its use and compose it with the common good. Therefore it will act unjustly and inhumanely if it draws from the goods of private persons, under the name of taxes, more than is fair.

3. What Masters And Workers Can Do In This Matter.

38. Finally, masters and the workers themselves can do much in this cause, namely by those institutions by whose help both timely relief is brought to the needy, and one order approaches more closely to the other.

Marginal summary: By associations of workers, adapted to the present time, whether composed of one order or of both.

In this kind are to be numbered associations for mutual aid: various things constituted by private providence for protecting the worker, and likewise the widowhood of wife and children, if some sudden thing should fall upon him, if weakness should afflict him, if anything human should happen; institutions of patronage, for protecting boys, girls, adolescents, and older persons. But the principal place is held by associations of craftsmen, within whose embrace nearly all the others are contained. Among our ancestors the benefits of incorporated artisans stood firm for a long time. In truth they brought forth not only excellent utilities for craftsmen, but also honor and increase for the arts themselves, as very many monuments testify. In this more learned age, with new customs, and with those things also increased which daily life desires, it is certainly necessary that associations of workers be bent to present use.

It is pleasing that societies of this kind commonly be formed, whether composed wholly of workers, or mixed from both orders; but it is to be desired that they grow in number and active virtue. Although indeed We have spoken of them more than once, nevertheless it pleases Us in this place to show that they are very opportune, and that they coalesce by their own right: likewise what discipline they ought to use, and what they ought to do.

Marginal summary: These associations are legitimate, A) from the natural right of coming together for mutual assistance.

39. The proved slightness of his own powers impels man and exhorts him to wish to join another's help to himself. That sentence belongs to Sacred Scripture: It is better that two be together than one: for they have the advantage of their society. If one falls, he shall be supported by the other. Woe to him who is alone: because when he falls, he has none to lift him up.[1] And also that other: A brother who is aided by a brother is like a strong city.[2] By this natural propensity man is led to civil union and congregation, and so also it is expedient for him to enter upon other societies with citizens, small indeed and imperfect, but societies nevertheless. Between these and that great society there is very much difference because of different proximate causes. For the end proposed to civil society pertains to all, since it is contained in the common good: it is right for all and each to be sharers of it according to their proportion. Therefore it is called public, because through it men communicate with one another in constituting one republic.[3] On the other hand, societies which are joined as if in its bosom are held to be private and are such, because namely that toward which they look proximately is private utility, pertaining to the associates alone.

[1] Eccl., IV, 9, 12.

[2] Prov., XXIII, 19.

[3] St. Thom., *Contra impugnantes Dei cultum et religionem,* ch. II.

But a private society is that which is joined together for carrying on some private business, as when two or three enter into society in order to trade together.[4]

[4] Ibid.

Marginal summary: Therefore the state cannot violate the right of coming together, from which it itself also arose, unless the institution fights with justice, with equity, with public order.

Now although private societies exist in the state, and are, as it were, just so many parts of it, nevertheless universally and of itself it is not in the power of the republic to forbid that they exist. For to enter into private societies has been granted to man by the right of nature: but the state was instituted for the defense of natural right, not for its destruction; and if it forbids assemblies of citizens to associate, it acts plainly in contradiction with itself, because both it itself and private assemblies are born from this one principle, that men are by nature capable of congregation.

Times sometimes occur when it is right for the laws to oppose this kind of communities: namely, if from their institution they pursue anything which openly disagrees with probity, with justice, or with the safety of the republic. In these causes, indeed, public power will rightly prevent those societies from coalescing: and rightly also dissolve those already formed; yet it is necessary that it employ the greatest caution, lest it appear to violate the rights of citizens, or establish anything under the appearance of public utility which reason does not approve. For laws are to be obeyed to the extent that they agree with right reason, and therefore with the eternal law of God.[1]

[1] Human law has the nature of law to the extent that it is according to right reason, and according to this it is manifest that it is derived from the eternal law. But to the extent that it departs from reason, it is called an unjust law, and thus it does not have the nature of law, but rather of a certain violence. (St. Thom., *Sum. Theol.*, I-II, Question XIII, a. III.)

Marginal summary: Among these institutions the first place is held by religious orders, most useful to the common good, which, as they are associations, it is equitable should enjoy from public power the greatest liberty, the right of moral person, and fortunes truly their own.

40. Here We consider in mind various associations, and colleges, and religious orders, which the authority of the Church and the pious will of Christians had generated: with how great safety of the human race history speaks, even to our memory. Societies of this kind, if reason alone judges, since they were entered upon for an honest cause, appear to have been entered upon by natural right. But in that part by which they touch religion, the Church alone is the one to which they justly obey. Therefore those who preside over the state cannot rightly arrogate any right to themselves over them, nor transfer their administration to themselves: rather it is the office of the republic to revere them, preserve them, and, when circumstances have demanded, protect them from injury. Yet We have seen this done far otherwise, especially in this time. In many places the republic has violated communities of this kind, and indeed with manifold injury: since it has both bound them by the bond of civil laws, and stripped them of the legitimate right of a moral person, and despoiled them of their fortunes. In those fortunes the Church had her right, individual members had theirs, likewise those who had assigned them to certain causes and for whose advantage and consolation they had been assigned. Wherefore We cannot restrain Our mind from lamenting spoliations of this kind, so unjust and pernicious, and this all the more because We see the way closed to societies of Catholic men, peaceful indeed and useful in every respect, at the very time when it is decreed that to come together in society is indeed permitted by the laws: and in reality that faculty is widely permitted to men who agitate counsels pernicious at once to religion and to the republic.

Marginal summary: B) These Catholic associations are very opportune.

41. Certainly the frequency of the most diverse associations, especially from workers, is now far greater than at other times. It does not belong to this place to inquire whence many of them

draw their origin, what they will, or by what path they proceed. Yet there is an opinion, confirmed by many facts, that more hidden authors preside over most of them, and that they employ a discipline consonant neither with the Christian name nor with the safety of states: and, having occupied the universality of producing works, they act so that those who refuse to associate with them are compelled to pay penalties by poverty. - In this state of affairs, Christian craftsmen ought to choose one of two things: either to give their name to associations from which danger to religion is to be feared, or to found their own associations among themselves, and in this way to join forces, by which they may manfully redeem themselves from that unjust and intolerable oppression. That this second thing must be desired altogether - what doubt can this have among those who do not wish to cast the highest good of man into the most present danger?

Marginal summary: Hence they are greatly to be praised, who strive to lead workers to better things; a) those who labor by word, b) those who labor by work, c) those who labor by apostolic zeal, d) those who labor by money toward this greatly to be desired end.

42. Indeed very many from among Our own are greatly to be praised, who, having well perceived what the times demand of them, make trial and attempt by what manner they can lead proletarians to better things by honest arts. Having taken up their patronage, they study to increase the prosperity both of households and of individuals: likewise to moderate with equity the bonds by which craftsmen and masters are mutually contained; to nourish and confirm in both the memory of duty and the custody of evangelical precepts; which precepts indeed, by recalling man from intemperance, forbid him to exceed measure, and, in a state of persons and things most dissimilar, preserve harmony in the state. For this cause We often see excellent men come together into one place, that they may communicate counsels with one another, join forces, and consult what seems chiefly expedient. Others strive to bind a various kind of craftsmen together in opportune society, they help by counsel and deed, they provide that honest and fruitful work not be lacking. Bishops add zeal and impart patronage: under whose authority and auspices many from each order of clergy diligently care for those things which pertain to cultivating the soul in the associates. Finally Catholics are not lacking who are rich in abundant wealth, but voluntary partners, as it were, of wage-earners, who strive to establish and broadly spread associations with great money: by whose help the worker may easily seek for himself by labor not only present advantages, but also the confidence of future honorable rest. How much good so manifold and so eager an industry has brought to common affairs is more known than needs to be said. Hence now We take auspices of hoping well concerning the remaining time, provided societies of this kind constantly take increases and are constituted by prudent moderation. Let the republic protect these assemblies of citizens lawfully associated: yet let it not thrust itself into their intimate order and manner of life; for vital movement is stirred by an interior principle, and is very easily crushed by an external impulse.

Marginal summary: C) The state ought to watch that these associations be rightly ordered, namely:

43. Certainly a prudent moderation and discipline is necessary for this matter, so that there may be agreement in acting and a conspiracy of wills. Therefore if there is a free faculty for citizens to associate, as indeed there is, it is also right that they may freely choose that discipline and

> those laws which they judge to conduce most to that which has been proposed. We do not think it possible to determine by fixed and definite rules what that moderation and discipline of associations ought to be in each of its individual parts, since this must rather be established from the character of each people, from trial and use, from the kind and efficiency of works, from the breadth of commerce, and from other circumstances of things and times, which must be prudently weighed.

from the kind and efficiency of works, from the breadth of commerce, and from other circumstances of things and times, which must be prudently weighed. As to the sum of the matter, let this be sanctioned as a general and perpetual law: that associations of workers ought to be so constituted and so governed that they supply instruments most apt and especially expeditious for that which has been proposed, and which consists in this, that individuals from the society may attain an increase of the goods of body, soul, and family estate, so far as possible.

Marginal summary: a) That they have as their end the perfection of piety and morals.

But it is clear that one must look to the perfection of piety and morals as to the principal cause: and that social discipline must be directed chiefly by this cause. Otherwise they would degenerate into another form, and would not by much surpass that kind of associations in which no account of religion is usually had. Besides, what does it profit the worker to have sought an abundance of things by society, if, through want of his own food, his soul is in danger concerning salvation? What doth it profit a man, if he gain the whole world, but suffer the loss of his own soul?[1] Christ the Lord teaches that this indeed is to be held as a mark by which the Christian man is distinguished from the heathen: For after all these things do the Gentiles seek... seek ye therefore first the kingdom of God and his justice, and all these things shall be added unto you.[2] Therefore, principles having been taken from God, let very much place be given to religious instruction, so that individuals may know their duties toward God: what they ought to believe, what they ought to hope and do for the sake of eternal salvation, let them know well: and by special care let them be fortified against errors of opinions and various corruptions. Let the worker be stirred up to the worship of God and the pursuit of piety, by name to cultivating religion on feast days. Let him learn to revere and love the Church, the common parent of all; likewise to obey her precepts and frequent the sacraments, which are divine instruments for expiating the stains of the soul and acquiring sanctity.

[1] Matt., XVI, 26.

[2] Matt., VI, 32, 33.

Marginal summary: b) As regards the rest, offices are to be well divided; the common property is to be administered integrally; there should be an upright arbiter for settling disputes of masters and workers; a supply of work is to be procured for members, and helps are to be supplied for necessities.

With the foundation of social laws placed in religion, the way is easy for establishing the mutual relations of members, so that quiet living together and flourishing affairs may follow. The duties of associations are to be distributed suitably to common interests, and indeed in such a way that difference does not lessen agreement. It is of great importance for this cause that offices be divided intelligently and defined clearly, lest injury be done to anyone. Let the common property be administered integrally, so that the measure of helping be determined from the need of individuals; let the rights and duties of masters suitably agree with the rights and duties of workers. If anyone

from either order should think himself violated in any matter, nothing is more to be desired than that prudent and upright men of the same body be present, by whose judgment the very social laws command the dispute to be settled. This also must be greatly provided, that a supply of work at no time be lacking to the worker, and that a revenue be supplied from which the necessity of individuals may be relieved, not only in sudden and accidental cases of industry, but also when health, or old age, or misfortune has oppressed anyone.

Marginal summary: D) Abundant fruits will follow thence for the republic and for workers, as history teaches.

44. With these laws, provided they are accepted by will, enough will have been consulted for the advantages and safety of the poorer; and associations of Catholics will be about to have no small moment for prosperity in the state. From past events We not rashly provide for the future. For age is driven out by age, but there are marvelous likenesses of accomplished things, because they are ruled by the providence of God, who moderates and bends the continuation and series of things to that cause which he set before himself in the procreation of the human race. - We have received that, in the ancient age of the infant Church, it was given as a reproach to Christians that the greatest part of them lived by precarious alms or by doing work. But destitute of wealth and power, nevertheless they prevailed so that they joined to themselves the favor of the wealthy and the patronage of the powerful. It was permitted to see them active, laborious, peaceful, preserving justice and especially charity as an example. At the spectacle of a life and morals of this kind, every prejudiced opinion vanished, the detraction of the malicious was silenced, and the fictions of inveterate superstition gradually yielded to Christian truth.

The condition of workers is being contested at present: it is of very great interest to the republic on either side whether this contest is settled by reason or otherwise. But it will easily be settled by reason by Christian craftsmen if, joined in society and using prudent authors, they enter upon the same way which their fathers and ancestors held with singular safety both their own and public.

Marginal summary: a) Thus workers will conciliate to themselves the benevolence of citizens, b) they will foster the hope of a better life, c) other workers also, burdened by the bonds of depraved associations, will give their names to Christian associations.

For however great the force of prejudiced opinions and desires may be in man, nevertheless, unless a depraved will has stupefied the sense of the honorable, the benevolence of citizens will spontaneously be more inclined toward those whom they have known to be industrious and modest, whom it has been established place equity before gain, religion of duty before all things. From this there will follow also that advantage, that hope and a faculty of safety, not the least, will be supplied to those workers who either have wholly despised the Christian faith, or live by morals alien from their profession. These men indeed generally understand that they have been deceived by false hope and by a feigned appearance of things. For they feel that they are treated very inhumanely by greedy masters, and that they are not valued much more than the amount of gain which they produce by working: but in those associations in which they are entangled, instead of charity and love, there exist internal discords, perpetual companions of petulant and unbelieving poverty. Broken in soul, weakened in body, how greatly many would wish to vindicate themselves from so low a servitude: and yet they do not dare, whether because the shame before men, or the fear of want, prohibits them.

Now to all these, Catholic associations can be of wondrous profit for salvation, if they invite the wavering to their bosom by disentangling difficulties, and if they receive the repentant into their faith and protection.

Peroration.

Marginal summary: 1) Let public power and each order enter upon this way without delay.

45. You have, Venerable Brethren, who must labor in this most difficult cause, and by what means. - Each one must gird himself to his own parts, and indeed very promptly, lest the inconvenience of so great a mass already become more incurable by delay of medicine. Let those who manage republics employ the providence of laws and institutions: let the wealthy and masters remember their duties: let the proletarians, whose matter is at stake, strive by reason: and since religion, as We said at the beginning, alone can thoroughly drive away the evil, let all consider this: Christian morals must above all be restored, without which those very arms of prudence which are thought most suitable will have little strength for safety.

Marginal summary: 2) But the Church, the greater liberty it obtains, will labor the more efficaciously.

As regards the Church, she will at no time and in no way allow her work to be lacking, and she will bring so much more help, the greater the liberty in acting which falls to her: and let those in particular understand this whose office it is to consult for public safety. Let the ministers of sacred things stretch forth all the forces of soul and industry: and with you, Venerable Brethren, leading by authority and example, let them not cease to inculcate in men of every order the documents of life taken from the Gospel: by every help they can, let them strive for the safety of peoples, and especially let them study both to guard in themselves and to excite in others, in the highest and the lowest alike, charity, the mistress and queen of all virtues.

Marginal summary: 3) Let bishops and clergy teach each order the precepts of the Gospel, especially divine charity.

For the desired safety is to be expected chiefly from a great outpouring of charity: We mean Christian charity, which is the summary law of the whole Gospel, and which, always ready to devote itself for the advantages of others, is for man the most certain antidote against the insolence of the age and the immoderate love of self: the parts and lineaments of which virtue the divine Apostle Paul expressed in these words: Charity is patient, is kind: seeketh not her own: beareth all things: endureth all things.[1]

[1] I Cor., XIII, 4-7.

As a pledge of divine gifts and a witness of Our benevolence, We most lovingly impart in the Lord the apostolic blessing to each of you, Venerable Brethren, and to your Clergy and people.

Given at Rome, at St. Peter's, on the 15th day of May, in the year 1891, the fourteenth of Our Pontificate.

LEO PP. XIII.

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MADE IN BELGIUM

Supplement: On Civil Law for Great Britain and the United States

For Great Britain And The Federated States Of America. — Introduction.

[Editor's note: This Supplement is not part of Tanquerey's Latin text. It was printed in English, on separately signed sheets, in the issue of the 1922 edition for Great Britain and the United States; the issue for France carried a supplement on French law in its place. By its own first note it is "a short compilation" from the books it cites, and it names no compiler.]

In England, as well as in the United States of America, law is of two kinds: international and municipal; the former is that rule of civil conduct, which is prescribed by the common consent of Christian nations, and regulates their intercourse with one another; the latter is that rule of civil conduct, which is prescribed by the supreme power in a State, and regulates the intercourse of the State with its subjects and of those subjects with each other. - Here we have to deal only with Municipal law.

[1] This Supplement is not an original work, but a short compilation made out of the books to which we refer our readers; where the authors have explained concisely their doctrine, we frequently quote their own words, thus to express more accurately their meaning.

[2] W. C. Robinson, *Elementary Law*, Boston (Little and Brown) 1882, § 1-12; Stephen, *New Commentaries on the Laws of England*, 12th ed., London (Butterworths), 1898, p. 38-81.

In either country, Municipal law is unwritten or written. Unwritten law, known also as customary law, or common law, is that which originated in the common wisdom and experience of society, in time became an established custom, and has finally received judicial sanction in the decision of the courts of last resort. Written law is that which has been directly prescribed, in so many words, by the supreme power of the State.

In America, municipal law is of two kinds: Federal law, which is enacted by the supreme power in the United States, and regulates, in matters of a national character, the intercourse of the federal government with the people, and of the people with each other or with citizens of foreign States; - State law, which is enacted by the supreme power in each individual State, and regulates, in all matters not of a national character, the intercourse of such State with its own people and of its people among themselves. - From this it follows that State laws are not the same throughout the Union, and that it is well for a priest to get a certain knowledge of the statutes of his own State; but, in the most intricate cases, it may be necessary to consult with a skilful and honest lawyer.

I. The Copyright Law.

By copyright we understand the right of an author to print and publish his own original work, exclusively of all other persons.

1° In England,[1] the copyright Act, 1842 (5 et 6 Vict. c. 45) provides that the copyright of every book, - under which word is included every volume, part or division of a volume, pamphlet, sheet or letterpress, sheet of music, map, chart, or plan separately published in the United Kingdom, - which shall be published in the lifetime of its author (whether a subject of the king or not) shall endure for his natural life, and for seven years longer; or, if the seven years shall expire before the end of forty-

two years from the first publication, shall endure for such period of forty-two years; and that, when the work is posthumous, the copyright shall endure for forty-two years from the first publication, and shall belong to the proprietor of the author's manuscript; and that, as regards articles which are first published in periodical works, the copyright, unless there is some agreement to the contrary, remains vested in the author. The proprietor of a copyright infringed, by the book being unlawfully printed within the British dominions, may claim damages for the injury already suffered, and an injunction to prevent the continuance of the infringement or piracy; as regards books unlawfully reprinted in any place out of the British dominions, and imported into the United Kingdom, they may be seized as forfeited, by any officer of the customs or excise, and the offenders are liable to penalties.

[1] Stephen, vol. II, p. 34-43.

Moreover by the International Copyright Acts, it is provided that His Majesty by order in council may, - as regards books, prints, articles of sculpture, paintings, drawings, photographs and other works of art, first published in a foreign country, - allow the respective authors, inventors, artists, and their personal representatives, privilege of copyright for any period not exceeding the term for which the like productions would be protected, if first published in the United Kingdom.

2° In the United States, the Act of March 3, 1891, provides that the author, inventor, designer or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print, or photograph or negative thereof, or of a painting, drawing, chromo, statuary, and of models or designs intended to be perfected as works of the fine arts; and the executors, administrators, or assigns of any such person, shall, upon complying with the provisions of this chapter, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing and vending the same: and, in the case of a dramatic composition, of publicly performing or representing it, or causing it to be performed or represented by others. Authors and their assigns have the exclusive right to translate or to dramatize any of their works.

(A) Conditions to be complied with. (a) But to secure this privilege books must be printed from type set or plates made in the United States; photographs from negatives made in the United States; chromos and lithographs from drawings on stone or transfers therefrom made in the United States.

(b) A printed copy of the title of the book, map, chart, etc., or a description of the painting, drawing, etc., for which copyright is desired, must be delivered to the Librarian of Congress, or deposited in the mail, within the United States, prepaid, addressed "Librarian of Congress, Washington." This must be done on or before the day of publication in this or any foreign country. - No later than the day of publication in this country or abroad, two complete copies of the best edition of each book or other article must be delivered, or deposited in the mail within the United States, addressed to the Librarian of Congress, to perfect the copyright. Besides, one copy of each new edition wherein any substantial changes are made shall be deposited in the office of the Librarian of Congress. - No copyright is valid unless notice is given by inserting in every copy, on the title-page or the page following, these words: "Entered according to Act of Congress, in the year - by - in the office of the Librarian of Congress, at Washington"; or "Copyright, 19 - by -."

(c) In the case of books published in more than one volume, or of periodicals published in numbers, a copyright must be entered for each volume, or part of a book, or number of a periodical. To

complete the copyright on a book published serially in a periodical, two copies of each serial part, as well as of the complete work, if published separately, should be deposited.

(d) Foreign authors may acquire copyright by complying with the foregoing regulations.

(B) Duration. The original term of copyright runs for twenty-eight years. Within six months before the end of that time, the author or designer, or his widow or children may secure a renewal for the further term of fourteen years, making forty-two in all. Within two months from date of renewal the record thereof must be advertised in an American newspaper for four weeks.

II. Patent Right.

Patent-right is a privilege granted by the State to the first inventor of any new contrivance, that he alone shall be entitled, during a limited period, to benefit by his own invention.

1° In England,[1] the applicant for a patent may be a British subject or a foreigner. (a) The application is made by petition contained in, and supported by, a solemn declaration that the petitioner is the true and first inventor, and that the invention is not in use in Great Britain by any other person, to the best of his knowledge and belief; it must be accompanied by either a provisional or a complete specification: in this latter case, the complete specification must be sent no later than nine months from the date of the application.

[1] Stephen, vol. II, p. 23-34.

(b) The object of patent must be a new manufacture within the realm of England, that is some article fabricated by the hand of man, or an addition, by way of improvement, to one already existing, or a chemical process of production; it must be new in Great Britain, but the previous notoriety of the article, in a foreign country, is no objection to the validity of the patent.

(c) The patent-right can be granted only to the true and first inventor: no one can claim this character, if it appear that the novelty in question was first suggested to him by some other person in England.

(d) It is granted for fourteen years, and this term may be extended for seven, or, in exceptional cases, fourteen years, in favour of a patentee who has not reaped the full benefit of his invention.

(e) If a patent-right be infringed, the inventor may claim damages for the injuries sustained, and obtain an order restraining the wrongdoer from the further use of the invention.

2° In America, patents are issued in the name of the United States, and under the seal of the Patent Office, to any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter or any new and useful improvement thereof, not known or used by others in this country, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, and not in public use or on sale for more than two years prior to his application, unless the same is proved to have been abandoned; and by any person who, by his own industry, genius, efforts and expense has invented and produced any new and original design for a manufacture, bust, statue, alto-relievo, or bas-relief; any new and original design for the printing of woolen, silk, cotton, or other fabrics; any new and original impression, ornament, pattern, print, or picture to be printed, painted, cast, or otherwise placed on or worked into any article of manufacture; or any new, useful, and original shape or configuration of any article of

manufacture, the same not having been known nor used by others before his invention or production thereof, nor patented nor described in any printed publication, upon payment of the fees required by law and other due proceedings had.

(a) Every patent contains a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the exclusive right to

make, use, and vend the invention or discovery throughout the United States and the Territories, referring to the specification for the particulars thereof.

If it appear that the inventor, at the time of making his application, believed himself to be the first inventor or discoverer, a patent will not be refused on account of the invention or discovery, or any part thereof, having been known or used in any foreign country before his invention or discovery thereof, if it had not been before patented or described in any printed publication.

(b) Joint inventors are entitled to a joint patent; neither can claim one separately. Independent inventors of distinct and independent improvements in the same machine cannot obtain a joint patent for their separate invention: nor does the fact that one furnishes the capital and another makes the invention entitle them to make application as joint inventors; but in such case they may become joint patentees.

(c) The receipt of letters patent from a foreign government will not prevent the inventor from obtaining a patent in the United States, unless the invention shall have been introduced into public use in the United States more than two years prior to the application. But every patent granted for an invention which has been previously patented by the same inventor in a foreign country will be so limited as to expire at the same time with the foreign patent, or, if there be more than one, at the same time with the one having the shortest unexpired term, but in no case will it be in force more than seventeen years.

(d) Applications for a patent must be made in writing to the Commissioner of Patents. The applicant must also file in the Patent Office a written description of the same, and of the manner and process of making, constructing, compounding, and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound, and use the same; and in case of a machine, he must explain the principle thereof, and the best mode in which he has contemplated applying that principle, so as to distinguish it from other inventions, and particularly point out and distinctly claim the part, improvement, or combination which he claims as his invention or discovery. The specification and claim must be signed by the inventor and attested by two witnesses.

When the nature of the case admits of drawings, the applicant must furnish a drawing of the required size, signed by the inventor or his attorney in fact, and attested by two witnesses, to be filed in the Patent Office. In all cases which admit of representation by model, the applicant, if required by the Commissioner, shall furnish a model of convenient size to exhibit advantageously the several parts of his invention or discovery.

(e) The applicant shall make oath that he verily believes himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvement for which he solicits a patent, that he does not know and does not believe that the same was ever before known or used,

and shall state of what country he is a citizen. Such oath may be made before any person within the United States authorized by law to administer oaths, or, when the applicant resides in a foreign country, before any minister, charge d'affaires, consul, or commercial agent holding commission under the Government of the United States.

(f) On the filing of such application and the payment of the fees required by law, if, on such examination, it appears that the claimant is justly entitled to a patent under the law, and that the same is sufficiently useful and important, the Commissioner will issue a patent therefor.

Every patent or any interest therein shall be assignable in law by an instrument in writing; and the patentee or his assigns or legal representatives may, in like manner, grant and convey an exclusive right under his patent to the whole or any specified part of the United States.

(g) A reissue is granted to the original patentee, his legal representatives, or the assignees of the entire interest when, by reason of a defective or insufficient specification, or by reason of the patentee claiming as his invention or discovery more than he had a right to claim as new, the original patent is inoperative or invalid, provided the error has arisen from inadvertence, accident, or mistake, and without any fraudulent or deceptive intention. In the cases of patents issued and assigned prior to July 8, 1870, the applications for reissue may be made by the assignees; but in the cases of patents issued or assigned since that date, the applications must be made and the specifications sworn to by the inventors, if they be living.

III. Of Things Real And Personal.

Property, as to its legal character, is of two kinds: real and personal. Things real (otherwise called real property or realty) are such as are, in contemplation of law, permanent and immovable as lands, houses, etc. Things personal (or personal property, or chattels) are those which, in contemplation of law, are movable and have not a permanent duration, such as jewels, watches, books, etc.; they are called personal, because they may attend the owner's person, wherever he goes. - Some introduce a third distinction, viz. mixed things, which partake of the nature of both, as deeds to an estate; these are called real by others, because they may be considered as something accessory to real property.

1° Of things real.[1] Real property consists in lands, tenements and hereditaments.

[1] Stephen, vol. I, p. 168-638; Robinson, *Elementary Law*, § 38 - § 93.

(A) First it consists of lands and of whatever is erected, or growing upon, or affixed thereto, including whatever is beneath or above the surface. By way of exception, houses, trees, growing crops might be personalty, for instance, if a house were built on the land of another, with the latter's consent. Again objects, in their nature real, may by severance from the realty, become personal; thus trees growing on the land are real; when cut, and lying in logs on the land, they are personal. On the other hand, an object, which considered in itself, is personal, may become real; so the materials of which a house is to be built, are personal; but, when constructed into a building, may become real; again a great many fixtures, though originally movable and personal, become real by being affixed to real estate.

(B) It consists also of tenements; which word includes not only houses and buildings, but whatever may be holden, provided it be of a permanent nature, as a grade in the army, offices, rents, etc.

(C) Hereditaments, which pertain also to real property, include whatever may be inherited, be it corporeal or incorporeal: (a) corporeal hereditaments include land and everything permanently

affixed to it; (b) an incorporeal hereditament is a right issuing out of a thing corporate, or concerning or annexed to, or exercised within the land in the ownership of another, such as the right of way, or the right of one man to pass and repass over the land of another by some accustomed or designated path.

2° Of things personal.[2] - Things or chattels personal comprise in a general way all sorts of things moveable. They consist of inanimate things, as goods, plate, money; or of vegetable productions, as the fruit or plant when severed from the ground; also of animals, which can convey themselves from one spot to another; lastly of certain incorporeal rights in moveables, such as patent-right, copyright, the right to a trade-mark.

[2] Stephen, vol. II, p. 1-12; Robinson, *Elem. Law*, § 113-118.

Chattels personal may be either in possession, or else in action: - in possession, when a man has the enjoyment, actual or constructive, of the thing; - in action, when a man has not the enjoyment of it, but merely a right to recover it by action, or by course of law: thus, money due on a bond is a chattel (or chose) in action, because, though not actually possessed, it may be recovered by course of law.

IV. Of Parent And Child.

Children are legitimate, when begotten or born in wedlock; illegitimate, when begotten and born out of wedlock. The legal presumption is that a child born during wedlock is legitimate; this presumption may be rebutted, but only by clear proof. In England, one born a bastard is not rendered legitimate by the subsequent marriage of his parents; but, in many States of the Union, subsequent marriage legitimates a child previously born. - Here we treat only of legitimate children.

[1] Stephen, vol. II, p. 289-304; Browne, *Elements of the Law of Domestic Relations*, Boston, 1890, p. 70-89; Robinson, *Elements of American Jurisprudence*, Boston, 1900, § 26.

1° Duties of parents. Parents are bound to protect, maintain and educate their children:

(a) To protect, viz. to uphold a child in his law-suits and defend him against an unjust assailant.

(b) To maintain minor children; but this obligation extends only to necessaries; and the father is not obliged to support his children in idleness if they are able to work. He is obliged by law to maintain them, even though they have some property of their own; but this rule has been relaxed by courts, when the estate of children is larger than that of parents. - After the father's death, the mother is bound to support the child, if able, but not at her expense, if the child has property of his own. - As a rule, the capital of his property will not be infringed for his support, except when necessary. - The parents are not liable for the debts of their children, even for necessaries, except when these have been bought with their parents' actual or implied authority.

(c) To educate their children, according to their condition; but this duty does not extend to a trade or profession.

2° Rights of parents. Parents have a right to the custody and services of their minor children.

(A) Custody. At common law, the father has the paramount right to the custody of the minor child, and, before dying, may appoint a testamentary guardian; in case of the father's death without the exercise of this power, the mother succeeds to these rights, but she loses them by remarriage. - The right of custody may be forfeited by misconduct, and granted to the mother or to a third person.

(B) Services. The father has the right to his children's services and earnings, whilst they live with him and are maintained by him; he may voluntarily relinquish this right by express or implied emancipation, which gives the child the free disposition of his own time and wages and discharges the parent from obligation to support, unless the child becomes unable to support himself. - But the father has no right in the child's separate personal or real estate; its management is entrusted to guardians or trustees appointed by the will of the donor of the property, or by a competent court.

The parent has a right of action for expenses and loss of the child's services caused by the negligence or wrong of another; this right is not defeated by the fact that the child is living with and in the service of another, unless the parent has relinquished all right to the child's service. - Again the father, or after his death the mother, has a right of action for enticing away or abducting the child, but not for enticing him into a marriage; the theory of this action is reimbursement for loss of service, not compensation for wrong to the child; the principle is the same in an action for seduction of a daughter.

The parent is not liable for his child's torts, although committed in his presence, but without his approval; he is liable for injury by the child's negligent acts which he knows of and permits on his premises.

V. Of Guardian And Ward.

At common law, an infant or minor is any person, male or female, under twenty-one years of age. But, in the United States, some statutes have reduced the age required for majority. Infants being generally unable, because of their youth and inexperience, to take care of their own interests, are placed under guardianship.

[1] Stephen, vol. II, p. 305-316; Browne, *Domestic Relations*, p. 90-122.

There are four kinds of guardians: (a) guardians by nature and nurture, who are the parents themselves, first the father, and on his death the mother; (b) testamentary guardians, who are appointed by the father's last will; (c) guardians appointed by the Court, when an infant, having some property, was entrusted to no other guardian; (d) guardians ad litem, who are appointed by a court of justice to prosecute, or more commonly to defend, for an infant in any action or litigious proceeding therein pending, to which such infant may be a party.[2]

[2] With regard to guardianship in socage, by election, or by custom, fallen in disuse, see Stephen, l. c., p. 310-314.

1° Rights and duties of guardians. (A) With regard to the person of the ward: the guardian is entitled to the custody of the ward's person, subject to the regulation of the court; his right is even superior to that of the parent, if this be alive; but as a rule the parent is appointed guardian, unless unfit. - Hence the guardian may recover the person of the ward from one unlawfully detaining him, select the place of his education, and bind him to apprenticeship.

He is bound to maintain him, but only from the ward's own estate. He has a large discretion in expenditure not encroaching on the capital, but is not allowed to expend more than the income of his ward's estate without consent of the court, except in the case of imperative and sudden necessity; in which case he may use the principal of personalty, but cannot sell the real estate except by order of the court and for the purpose of maintenance. - If necessary, he may place the ward at work, or if he is too young and feeble, entrust him to some charitable institution. - As he has no right to his ward's

services, he cannot recover, for his own profit, any compensation for injuries committed against the ward.

(B) As to the ward's estate, the guardian is bound to manage it as a good and faithful administrator: he must receive, collect and invest the income, pay the necessary expenses of his ward, and account for his trust; he may lease, discharge a mortgage, sue for debts, compromise, release, or submit to arbitration. He cannot by general contract bind his ward's estate, nor avoid a beneficial contract made by his ward. He has no right to purchase the ward's property or sell his own property to his ward. He may lease the real estate of the ward, and repair it, but must not make improvements without authority of the court; with regard to selling real estate, special formalities are required.

In the discharge of all these duties, the guardian must act with care and diligence, and is responsible for fraud and negligence; but, when he has acted in good faith, according to his best judgment and with ordinary care, he will not be strictly held for losses.

The guardian cannot reap any personal benefit from his ward's estate except what is allowed by court for his services.

2° Rights of the ward. The ward may restrain his guardian from committing waste. - On the termination of the guardianship, he may sue him for an accounting, within a reasonable time. He will always receive the aid of the court in recovering property embezzled, concealed or conveyed away in fraud of his rights.

A gift or conveyance from ward to guardian during or shortly after majority is presumed fraudulent, and will not be sustained except on the clearest proof of the utmost good faith.

An infant may bind himself by contract for necessaries; but most of the other contracts made by him are considered as voidable.

VI. Of Husband And Wife.

Under the ancient rules of the common law, the wife's personality was suspended and merged in that of her husband, with whom she became in law one person, and that person the husband. All her

[1] Stephen, vol. II, p. 246-288; Browne, p. 29-53; Robinson, *Jurisprudence*, § 41-43.

personal property which she had in her possession at the date of the marriage, instantly became the property of the husband, and all her claims and rights of action against others vested in him, to be collected by him and applied to his own use, if he chose. Her temporary interests in lands, the rents and profits of her real estate, and all her services and earnings during the time of coverture (that is until the marriage relation was legally dissolved) were also his.

But in more recent times, both in England and America, these disabilities of married women have been greatly modified, first by the action of courts of equity, and next by legislative enactment.

1° In England, the matter has been mostly settled by the Married Women Property Acts of 1870 and 1882. According to these statutes, every woman who marries on or after the first day of January, 1883, is to hold as her separate estate all her property, either then already belonging to her or afterwards coming to her in any manner, whether such property be real or personal, including wages, earnings, and gains earned or made by her in any occupation which she carries on separately from her husband. - Besides a wife, whenever married, may effect an insurance upon her own or her husband's

life, for her separate use, and may also acquire property independently of her husband in such deposits as she shall have made in a savings bank, or other bank, or as she shall have invested in the funds, in a joint-stock company, or in an industrial or loan society, - provided that she shall not have used her husband's moneys without his consent, and shall not have deposited or invested such moneys in fraud of his creditors. - Again, if a wife be deserted by her husband without reasonable cause, she may obtain an order, which is called a protection order, under which any money or property she shall acquire by her own lawful industry, or become possessed of, after the desertion, will be protected and belong to her as if she were a feme sole (unmarried); and if a wife is judicially separated from her husband, she is to be deemed a feme sole as regards all her property acquired subsequently to the judicial separation.

If she survives her husband, she is entitled to dower, that is to hold to herself, for the term of her natural life, the third part of all the lands and tenements of which her husband was seized or possessed in fee simple or fee tail at any time during the coverture, and of which any issue that she might have had could have been heir.

2° In America, each State has its own system of laws governing married women, and sometimes different systems applied to parties married before or after certain dates, and sometimes different systems under any one of which the parties may elect to live.

The State of New York, being the earliest and perhaps the most radical in this reform, it may be well to point out the substance of the statutes enacted on this point. The main principle is that a married woman retains the ownership, administration and enjoyment of her own real or personal property as if she were a feme sole, or unmarried. Hence, she may bargain, sell, assign and transfer her personal property, - perform any services or labor, carry on any trade or business on her sole and separate account, and her earnings therefrom shall be her sole and separate property. She may sue and be sued in all matters pertaining to her separate property, for damages or injury to her own person or character, and the recovery shall be her sole property. - She is not liable for the debts of her husband, except for those contracted by her as his agent for the support of herself and her children. The husband is not liable for his wife's ante-nuptial debts except to the amount of her separate property acquired by him; nor for contracts made by her respecting her separate property, unless it relates to property given or granted by him.

Many States by statute permit the wife to have the benefit of an insurance on the husband's life as against his creditors, though he has paid the premiums with his own money.

In some States of the Union, not only the widow, but also the husband, at the death of his wife, has the right of dower;[1] so, in Maryland, according to the new law of 1898, "every husband shall acquire, by virtue of his marriage, an estate for his life in one third of the lands held or owned by his wife at any time during the marriage, whether by legal or equitable title ... but such estate shall not operate to the prejudice of any claim for the purchase money of such lands, or other liens on the same". Yet this right of dower may be relinquished by either husband or wife, by joint or separate deed, according to the statutes of the various States.

[1] Dower, in English law, is the right of the widow to the use and enjoyment, for her life, of one-third of all the real estate of the deceased husband which the children could have inherited.

VII. Of Corporations.

1° Notion. A corporation is a body consisting of one or more persons, established by or under the authority of the law, with the capacity of succession, either perpetual or for a limited period, and the faculty of acting as a natural person. - It may consist of one member, who is then a corporation sole; thus every bishop in England, and a few bishops in America, are acknowledged as corporation sole for their respective diocese. But generally corporation consist of several members. - Corporations are public, when created by law to promote public interests, such as counties, towns, cities; or private, when created for the private benefit of the members, such as banks, joint-stock companies, universities, etc.

[2] Stephen, vol. III, p. 2-55; Robinson, *American Jurisprudence*, § 71-112.

2° Organisation. Formerly a charter, granted by Parliament or by the Legislature of the State, was required for any new corporation. But now, in most of the States of the Union, a corporation may be formed by complying with some conditions determined by the Statutes of each State. As a rule, articles of incorporation have to be drawn up and signed by a certain number of persons, determining the name, the object, the place of business, the amount of capital or stock, the names and residences of stock-holders and of directors; these articles are deposited with and filed in the proper office; and from this moment the corporation has a legal existence.

So a corporation must have a name by which it may make contracts and hold property, sue and be sued; it must have a corporate seal to be affixed to the documents, and a place of business for the general management of affairs. It has the right of perpetual succession, by appointing new members and officers.

3° Dissolution. A corporation may be dissolved in various ways: by the death of all its members, if new ones have not been elected; by the voluntary consent of its members; by expiration of the time determined by the statutes, if limited; by a law repealing the charter, if created by an act of the Legislature; by a decree of forfeiture for misuse or non-user of its privileges.

VIII. Of Prescription.

In Great Britain as well as in America, there is a distinction to be made between prescription and limitation at law.

1° Of prescription properly so called.[1] In British countries as well as in the United States, prescription proper applies only to incorporeal hereditaments and to certain exemptions and privileges; land or moveables cannot be claimed by prescription. Incorporeal hereditaments include, among other species, the right of way, the right of fishing, the right to water cattle at a spring, or pond or stream, the right of pasture, the right to lay pipes to conduct water or gas, the right to put up a wall or a fence on the land of an adjacent proprietor, and also rents, offices, dignities, franchises and the like. - Prescription is always founded on the actual possession of the thing in question, and the measure of the actual enjoyment is, as a rule, the measure of the right. The time, during which such possession must have continued, was determined, in England, by the Prescription Act, 1832, and is of twenty, thirty, forty and sixty years according to some distinctions which it would

[1] Stephen, vol. I, p. 595-638; Robinson, *Elem. Law*, § 132.

be too long here to explain; - in the United States, it is fixed by statute, and extends usually to twenty years.

In either country, the possession must have been: (a) adverse, i. e. inconsistent with the enjoyment of the corporeal property by its true owner; (b) under a claim of right; i. e. with the avowal on the part of the possessor, that he has a real right to the possession of the incorporeal hereditament; (c) peaceable and continuous, i. e. without such action, on the part of the owner of the corporeal property, as suspends, or restricts or interferes with the enjoyment of the hereditament by its possessor; also without abandonment, or disuse on the part of the possessor; and therefore enjoyed during the whole of the required period of time by the same individual possessor, or by a series of individuals, each claiming a title through his predecessors; (d) with the knowledge of the owner of the corporeal property.

2° Of the limitation of actions. Besides prescription, by which a right may be acquired, there is another privilege, called limitation at law, whereby the claimant of a right cannot, after a certain period, enforce his claim before a court of justice.

The statutes of limitation originated in England as far back as 1623, and were adopted in most of the States of the Union.

In Great Britain,[1] the statutes of limitation apply both to real and personal property.

[1] Stephen, vol. III, p. 508-525.

(A) The real property Limitation Act, 1874, completing and correcting the statutes previously enacted, decides: (a) that no person shall, after 1st January 1879, make entry or distress upon, or bring an action to recover any land or rent, unless within twelve years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same. However if, at the time at which the right of any person shall first accrue, such person is under the disability of infancy, coverture, idiocy, lunacy or unsoundness of mind, he or the person claiming through him may, though twelve years have expired, enter or sue within six years next after the person to whom the right accrued shall have died or ceased to be under disability; but no such right of entry, distress or action, shall be exercised, except within thirty years next after the right accrues, even though the disability may have attached during the whole of the thirty years, or although the term of six years above mentioned shall not have yet expired.

(b) That no action or other proceeding shall be brought to recover any money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land or rent at law or in equity, or any legacy, except within twelve years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, - unless indeed part of the principal money shall have been paid or an acknowledgment in writing given, and then only within twelve years after such payment or acknowledgment.

(c) That no arrears of rent, or of interest, or any damages in respect of any such arrears, shall be recoverable, but within six years after the same shall have become due or been acknowledged in writing to the person entitled thereto or his agent, signed by the party chargeable or his agent, - subject to this proviso, that where a prior mortgagee or incumbrancer has been in possession, within one year next before action, the second mortgagee may in his action recover the arrears of his interest for the whole period (although exceeding six years) that the prior mortgagee has been in possession.

(B) With regard to things personal, it is provided, in substance: (a) that actions of trespass in general, all actions of account (other than between merchants), and all actions of debt on simple contract, or for arrears of rent not due upon specialty, shall be limited to six years after the cause of action accrued; (b) that actions of trespass for the particular injuries of assault, menace, battery, wounding and imprisonment, shall be limited to four years; (c) and the actions on the case for verbal slander, shall be limited to two years. - But to these limitations, there are exceptions, in favour of persons labouring under disability.

N. B. Between these two classes of limitations, there is this important difference, namely, that the former statute concerning real property has, by its express provision, the effect of extinguishing the right, as well as of barring the remedy; whilst the latter, concerning personalty, bars the remedy only, without extinguishing the right, so that though I can bring no action to recover a debt on contract, after the expiration of the limited period, there is nothing to prevent my obtaining payment of the debt after that period in any other manner. - This distinction is particularly important for the forum conscientiae.

In the United States, the matter is regulated by statutes which substantially agree with the English regulations as above explained. However, in many States, the period of time during which an action may be brought to recover real property, is twenty years, as it used to be in England before. - Besides, in some States, special laws have been enacted allowing squatters sooner to become owners of the lands they have cultivated in good faith.

[Pages 16* and 17* of the Supplement are missing from the only scan we have; the text resumes mid-sentence on p. 18*.]

include an indemnity against the obligations which he has contracted under the contract which is set aside, but it cannot, as a rule, include damages for loss sustained.

(C) These untrue conclusions may have been induced by representations of the other party made with a knowledge of their untruth and with the intention of deceiving: this is fraud. The person injured by fraud has several remedies: (a) he may affirm the contract and ask for a fulfilment of its terms, or damages for such loss as he has sustained by their non-fulfilment; (b) he may avoid the contract, either by taking active steps to get it cancelled on the ground of fraud, or by resisting a suit for specific performance, or an action for damages brought in respect of it; (c) if, after becoming aware of the fraud, he does not give notice of his intention to avoid the contract, he may lose his option to affirm or avoid the contract, but he retains the right of entering an action for deceit and of recovering by that means such damage as he has sustained.

(D) The consent of one of the parties may have been extorted from him by the other by actual or threatened personal violence[1]: this is duress. A contract entered into under duress is not void ipso facto, but is voidable.

[1] It is considered to be personal, when the subject of it is the contracting party himself, or his wife, parent, or child.

(E) Circumstances may render one of the parties morally incapable of resisting the will of the other, so that his consent is no real expression of intention: this is undue influence. Contracts made under such an influence are voidable, not void. As soon however as the undue influence is entirely withdrawn, the contract may be reaffirmed by the influenced party and thus become valid.

4° Of the subject-matter of contracts. The subject-matter of a contract may be either some real or personal estate, or some exercise of "skill and labor," or some right or some forbearance of an existing right, or any other matter beneficial to the person to whom it is to be given, or for whom it is to be done. But certain objects of contract are forbidden or discouraged by law.

(A) Some contracts are forbidden by Statute; thus certain wagers[2] have been declared to be void, in England, by the Gaming Act of 1845, enacting: "that all contracts or agreements, whether by parole or in writing, by way of gaming or wagering, shall be null and void; and that no suit shall be brought or maintained in any Court of Law or Equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made".

[2] A wager is a promise to give money or money's worth upon the determination or ascertainment of an uncertain event; wagers, or wagering contracts, made by a man to protect himself against a risk (marine insurance, life insurance) are perfectly lawful; but wagers made entirely for sport or gambling are forbidden.

(B) Other contracts are illegal at Common law; such are agreements to commit a crime, an indictable offence, or a civil wrong; agreements to injure the public service, or to pervert the course of justice; agreements which are contrary to good morals.[1]

[1] Thus a promise made in consideration of future illicit cohabitation is unlawful; a promise made in consideration of past illicit cohabitation, is not considered to be illegal, but a mere gratuitous promise, binding, if made under seal, void if made by parol. (Anson, op. cit., p. 217-218.)

N. B. The effect of illegality upon the validity of contracts varies according to circumstances; it may affect the whole or only a part of the contract; the contract may be simply discouraged, in as much as the law will not enforce it, or made void. (a) When the contract is divisible, i. e. when you can sever the illegal from the legal part, you may reject the bad part and retain the good; but where you cannot sever them, the contract is altogether void. (b) From the text of the law, it must be considered whether the contract is forbidden under penalty, without being declared void, - or whether it is simply discouraged, but without any penalty, - or whether it is purely and simply made void.[2]

[2] As for illustrations, see Anson, op. cit., p. 224-227.

5° Of the parties to a contract. Any person, not debarred therefrom by law, may make a contract. Now certain persons are by law incapable, wholly or in part, of binding themselves by a promise, or of enforcing a promise made to them. This incapacity may arise from political or professional status, - from youth, - from the marriage bond, - from permanent or temporary aberration of mind.

(A) From political or professional status: (a) An alien cannot acquire property in a British ship. - An alien enemy cannot, without licence from the Crown, make any fresh contract or enforce any existing contract during the continuance of hostilities; but his rights as to contracts made before the commencement of war are only suspended, and can be enforced upon the conclusion of peace. - A person convicted of treason or felony cannot, whilst undergoing sentence, make a valid contract, nor enforce contracts made previous to conviction; but these may be enforced by an administrator appointed by the Crown. (b) A barrister cannot sue for fees due to him for services rendered in the ordinary course of his professional duties.

(B) From youth. (a) In England, the Common law about infants has been modified by the Infants' Relief Act of 1874, which provides as follows: "All contracts whether by specialty or by simple

contract henceforth entered into by infants for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessaries), and all accounts stated with infants, shall be absolutely void. - No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there shall be or shall not be any new consideration for such promise or ratification after full age". - From this it follows that contracts for necessaries are binding on infants, although they may take the form of supply of goods or even a loan of money; it belongs to the Court to determine whether the things supplied can reasonably be considered necessaries at all, according to the station in life of the infant or the peculiar circumstances in which he may be placed. Again contracts of apprenticeship and with regard to labor are not void on the plea of infancy alone; when the contract, carefully examined in all its terms, is for the benefit of the infant, the Court will not allow the infant to repudiate it. Besides, if an infant has paid money for goods received, and taken benefit under the contract, he cannot recover the money so paid.

N. B. In the United States, the contracts of infants, except those for necessaries, are voidable only, at their option. Besides, contracts for necessaries do not bind them, when they are sufficiently supplied by their father, mother or guardian.[1]

[1] Browne, *Domestic Relations*, p. 107-112.

(C) From the marriage bond. Formerly the contracts of a married woman were, as a rule, void. But, in England, by the Married Women's Property Acts of 1882 and 1893, a married woman may enter into contracts, and render herself liable thereupon, as though she were a feme sole, in respect of and to the extent of her separate property acquired before or after marriage.[2]

[2] Anson, op. cit., p. 137.

In most of the States of the Union, the same doctrine begins to prevail, and the contract of a married woman may be enforced against her separate property, when it relates to or is made for the benefit of her separate estate, or when created in or about carrying on a trade or business of the wife.[3]

[3] Browne, op. cit., p. 45-47.

(D) From permanent or temporary aberration of mind. (a) The contract of a lunatic is binding upon him, unless it can be shown that, at the time of making the contract, he was wholly incapable of understanding what he was doing, and that the other party knew of his condition. (b) A contract made by a person in a state of intoxication may be subsequently avoided by him, but if confirmed, whilst he is sober, is binding on him.

X. Of The Contract Of Sale.

The contract of sale is a contract by which the property in goods is transferred from one person to another for a price. Where this price is money, it is a sale proper; where it is goods, it is called exchange or barter. Again there is a difference between a sale and an agreement to sell: where the property in the goods is transferred from the seller to the buyer, the contract is called a sale; but where the transfer is to take place at some future time, or subject to some condition thereafter to be fulfilled, it is an agreement to sell. - To constitute a sale, the goods sold must be specific, i. e.

sufficiently determined, - in a deliverable state, and the sale must be unconditional; if any one of these requisites is missing, the contract is only an agreement to sell.

[1] Stephen, vol. II, p. 73-86; Anson, p. 85-86 et alibi passim; Kent, vol. II, Lect. XXXIX.

1° In Great Britain, the contract of sale is now regulated by the Sale of Goods Act, 1893; we shall give a brief summary of the main points contained therein.

(A) With regard to the transfer of property: (a) In the case of a sale for ready money, of specific goods, immediately deliverable, the property in the goods is transferred, as soon as the price is agreed upon by the two parties, provided one of these three conditions is fulfilled: 1) delivery of the goods or of any portion of them, by way of earnest, or tender of delivery, - 2) payment or tender of payment, - 3) if any part of the price be paid down and accepted. - (b) In the case of a sale of goods on credit, i. e. when the goods are to be delivered forthwith, but to be paid afterwards, the property passes to the vendee immediately upon the striking of the bargain, without either delivery of the goods on the one hand, or tender of payment on the other. - (c) Where there is a contract for the sale of unascertained goods (i. e. not specific), the property passes not until the particular goods are ascertained or made specific by weighing out, or by severance or otherwise. - (d) Where the goods are not in a deliverable state, the property remains in the vendor and at his risk; sometimes, as in the case of ships which are being built under a contract to pay piecemeal as certain parts of the vessel are completed, the property passes piecemeal from the vendor into the vendee.

(B) With regard to the right of possession. Even in the case of a sale of specific and finished goods, the vendee cannot take the goods (if bought for ready money), until he pays or tenders the whole price agreed on. But, if he tenders the money to the vendor, and the latter refuses it, the vendee may seize the goods, or bring an action against the vendor for detaining them.

(C) When the goods are sold for the price of ten pounds sterling or upwards, the contract of sale shall not be enforceable by action, except the buyer shall either accept part of the goods and actually receive the same; or unless he shall give something in earnest to bind the bargain, or in part payment; or unless some memorandum or note in writing of the bargain be made and signed by the party to be charged with such contract, or his agent thereunto lawfully authorized.

(D) If the vendor of goods transmit them to the vendee, without receiving payment of the price, and afterwards become aware that the latter is insolvent, the law allows him the right of stoppage in transitu, i. e. of reclaiming the goods, whilst they are still in their transit, and not yet delivered to the vendee.

(E) With regard to the transfer of rights from the vendor to the vendee, attention is to be paid to the following regulations:

(a) "Subject to the provisions of this Act, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

(b) Where goods are sold in market-overt,[1] according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller...

[1] By sale in market-overt is meant selling goods in open market as opposed to selling them privately. In the country the market-place or piece of ground set apart by custom for the sale of goods is in general the only open market there; but in London, and in other towns where so warranted by custom, a sale in an open shop of proper goods is equivalent to, and in fact amounts to, sale in market-overt. (Indermaur, *Principles of the Common Law*, 6th ed., 1891, p. 323.)

(c) When the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

(d) Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen revests in the person who was the owner of the goods, or his personal representative, notwithstanding any intermediate dealing with them, whether by sale in market-overt or otherwise...

(e) Notwithstanding any enactment to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to larceny, the property in such goods shall not revest in the person who was the owner of the goods, or his personal representative, by reason only of the conviction of the offender.

(f) Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same."

(F) As for the execution of the contract, these are the main points to be minded: -

(a) "It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

(b) Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

(c) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, the place of delivery is the seller's place of business, if he have one, and if not, his residence: provided that, if the contract be for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery...

(d) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered, he must pay for them at the contract rate. - Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate. - Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

(e) Where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is prima facie deemed to be a delivery of the goods to the buyer. - Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages...

(f) The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them. - Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them."

2° In the United States, the same regulations are substantially in force, subject however to a few modifications from the Statutes of the various States.

XI. Of Last Wills And Testaments.

A will or testament is an instrument by which a person makes a voluntary disposition of his property to take effect after his death.

[1] Stephen, vol. I, p. 543-564; Schouler, *A treatise on the Law of Wills*, 3rd ed., Boston, 1900; G. F. Tucker, *Your will: how to make it*, Boston, 1896.

1° Who may make a will? All persons of sound mind, except infants and married women, whose capacity is somewhat restricted.

(a) Soundness of mind, such as will enable a person to make a will, has relation to the business to be transacted: hence his mind must have been sound with reference to whatever is involved in this transaction: he must have been able to understand the nature of his property, and his relations to those persons who are about him and to those who would naturally have some claim to his remembrance; he must have been capable of understanding the nature of the act he was doing, and free from any delusion which was the effect of disease and which would or might lead him to dispose of his property otherwise than he would have done, if he had known and understood correctly what he was doing. - Therefore the will of an idiot, or lunatic, or insane person is invalid when he is wholly without mental powers or self-control, or when the nature of its provisions is such as he could not have comprehended it, or when it is made under the influence of some delusion, or in obedience to an impulse at once unreasonable and irresistible, or under the pressure of external conditions which perverted his judgment, or exercised such undue influence over his testamentary act as it could not have been entirely voluntary.[1] - The capacity of making a will must exist when being made, and subsequent incapacity will not invalidate it.

[1] Robinson, *Amer. Jurisprudence*, § 36. - To break a will for *drunkeness*, it must be proven by contestants not only that the testator was intoxicated but also that he did not comprehend what he was doing.

(b) With regard to infants, at common law, they cannot devise real property, but may make a will of personal property at 14, if males, and at 12, if females. But this was modified in the United States by some statutes, which allow a greater capacity to infants.

(c) Married women, at common law, could not make a valid will, and marriage revoked their wills already made. But now it is otherwise. In England, by virtue of the New Wills Act, married women have the fullest power of devise in regard to their separate estate. In most of the States of the Union, the wife's will made before marriage is no longer revoked by marriage, and she may generally bequeath her own separate property as if unmarried. Besides she can make a will in favor of her husband, and such a will is no longer revoked by her second marriage.[2]

[2] Browne, *Domestic Relations*, p. 54-55.

2° Who may receive by will? Generally every person, even infants, wives, insanes, except those expressly forbidden by law. Now, as a rule, witnesses subscribing to the will cannot be legatees, unless they be creditors whose debts are, by the will, made a charge on the real estate. Corporations can receive by will only to the extent allowed by their charter. In a few American States, aliens are still debarred from the privilege of being legatees. - In most of the States, a testator may cut off his children, if he pleases; but in some, the law provides that, if a child is not mentioned in the will, he shall take the same share of the estate as he would have been entitled to, if his parent had died intestate: this accounts for the familiar provision of a legacy to a child of a dollar, thus to mention his name.

3° What property may be bequeathed? As a rule, all the property, real or personal, which one owns, after all the debts have been paid. Formerly, at common law, the testator could dispose only of the property already acquired at the time of making the will; but now, in England as well as in most States of the Union, one may dispose by will of all real and personal estate, legal or equitable, to which he or she shall be entitled at the time of death. Yet, there are certain kinds of property, such as an estate of homestead, a life insurance, that are devisable only under certain conditions, for which it may be necessary to consult with a lawyer.

4° Legal forms of wills. Two kinds of wills are recognised by law: nuncupative and formal. A nuncupative will is an oral will declared by a testator before witnesses, and afterwards reduced to writing; it is valid when made by a soldier in actual military service, - i. e. engaged in an expedition, - or a sailor at sea, or, in some States, by other people in extremis who are prevented from executing a formal will. But, apart from these exceptional cases, all wills must be in writing.

(A) In England[1]: (a) No will is valid, unless it be in writing, and signed at the foot or end thereof by the testator or some other person, in his presence, and by his direction, such signature being also made or acknowledged by him, in the presence of two or more witnesses, present at the same time, and such witnesses attesting and subscribing the will in his presence. According to the new statutes, the incompetency of any attesting witness will not invalidate the will; yet, any beneficial gift to an attesting witness, or to the husband or wife of an attesting witness, remains void.

[1] Stephen, l. c., p. 551-554.

(b) As to revocation, no will shall, under the new statute, be revoked by the marriage alone of a testator or testatrix. A revocation may, however, take place by the execution of another will or of a codicil, or of some writing of revocation executed like a will, or by the burning, tearing, or other destruction of the original will by the testator or by some person in his presence and by his direction; - obliteration and other alteration made after execution are of no effect, where the original meaning can still be deciphered, unless executed with the same ceremonies as the will itself, or the signature of the testator and the subscription of the witnesses, be made opposite or near the part altered, or at the foot or end of some memorandum written on the will, and referring to the alteration.

(c) When a will is once revoked, it is not to be revived otherwise than by re-execution of the original, or by a codicil duly executed and showing an intention of revival.

(B) In the United States, the same rules are substantially enforced with a few exceptions introduced by statute-laws. (a) So, in a very few States, holograph wills are allowed: they must be entirely written, dated and signed by the testator's own hand, and when it is so, no subscribing witnesses are required.

(b) But, in most of the States, two or three witnesses are required: any one may be a witness who is competent to give testimony, and is not, on the other hand, beneficially interested in the will. If the will is not written by the testator, but by another person, this person shall write his own name as a witness, in the presence of two other witnesses; - besides, the testator shall write his full name at the end of the will, - or, if he does not know how to write, he will make a cross or any other mark. - It is not necessary that the witnesses should know the contents of the will; but the testator must acknowledge, in their presence, his signature, and declare that this paper is his last will and testament. Then the will is to be signed by them, in presence of the testator and in the same room; in some States, the simultaneous presence of all the witnesses is required. If the witnesses cannot sign, a cross or other mark will suffice. They should also write out their addresses, though this is not necessary for the validity of the testament. - A codicil, i. e. any new disposition added to the will, is subject to the same legal forms as the will itself.

(c) As a rule, a will is revoked by marriage and the birth of a child subsequent to the writing of the will, if the wife and child were wholly unprovided for; but marriage alone will not, in most of the States, break off the will. It may be also revoked by the destruction of the original will, or execution of another will, as explained above, p. 26.

5° Of the executors or administrators of the will. It is well for the testator to appoint an executor of the will; otherwise, the Court will provide for it by appointing an administrator. The appointment of an executor may be qualified by limitations as to time, place and subject matter, and the appointment may be conditional. - As a rule, any one capable of making a will may be an executor. In some States, minors may be named as executors, but they cannot act if they are under twenty-one years of age when the testator dies. In most States, a single woman may now be an executor; and, under modern statutes, married women may also, in many States, act as executors, without any assent on the part of their husbands.

The duty of an executor, after burying the deceased party, is to have the will proved in the proper Court, and, after probate, to make an inventory of the property,[1] which must be filed within a stated period in the register's office. Then he will administer the property according to the directions of the

will and the laws of the State. Where there is a deficiency of assets, if there are no directions in the will on the subject, personal property is generally to be used first to pay debts with, and real property afterwards.

[1] By way of exception, an inventory may not be necessary, where the testator makes the executor the residuary legatee. But, in this case, if there is not property enough to pay debts and legacies, the executor may have to pay them out of his own property.

He must pay the debts of the deceased, and observe the rules of priority, according to the several degrees which the law has established in this matter; next the legatees are to be paid.[1]

[1] As for the order to be followed in the payment of debts and legacies, see Stephen, vol. II, p. 209-215; and, with regard to the United States, the various Statutes.

Executors or administrators are not allowed to retain a part of the revenue as a payment for their services, except by order of the Court.

6° A few practical suggestions on making a will. (a) If you are of age, and have any property of your own, make a will as soon as possible: else a part of your estate might be wasted in legal expenses. Do not put it off until you are dying: wills written when the testators are in extremity are often unsatisfactory, as important matters are likely to be forgotten, and suspicion of undue influence may be aroused.

(b) A will entirely of your own handwriting affords the best proof that it is genuine; but take heed that its legal expressions be sufficiently clear; hence, be not satisfied with reading the statute-law of your own State on the matter of wills, but consult a lawyer, and show him your draft. After your will has been prepared, think its provisions over, for two or three days before executing it, provided of course you are not in danger of death.

(c) Write out your will in a plain and clear style; if it is obscure, the Court may have difficulty to get at your intention. See that the words used by you not only convey your meaning, but that they convey no other meaning. If you make a detailed will, be careful in the description of the property devised to your legatees. - When the will is written on several sheets of paper, it is safe to sign every sheet, the better to identify it.

(d) See whether, in case your legatee dies before you, you wish his children or other representatives to take his share, and express it clearly.

(e) Have witnesses respectable for their character and good standing, clear-headed, honest and disinterested, one or two more than the number strictly required, who are not your own legatees. Talk with them clearly and intelligently upon matters of local and personal interest, so as to impress upon them that you are perfectly sound of mind and free from all undue influence.

(f) When once your will has been executed, permit no alteration of any sort: but, if you have changed your mind, make rather a new instrument.

(g) Keep your will in such custody as it will not be destroyed or altered, and leave a sealed copy of it to a trustworthy friend.

XII. Of The Law Of Descent.

In the case of an intestacy, i. e., where no will has been made, or where the testator has not disposed of his whole estate, the property or its residuum has to be divided according to the law of descent.

1° In England, a distinction is to be made between real and personal estate.

(A) The rules of descent applicable to the real estate of persons dying before the first day of January, 1834, are as follows:[1]

[1] These rules are condensed from Stephen's vol. I, p. 369-406, to which we refer our readers for a clear exposition of the same.

(a) In every case the descent shall be traced from the purchaser; now the word purchaser means here the person who last acquired the land otherwise than by descent.

(b) Inheritance shall in the first place lineally descend to the issue of the purchaser, in infinitum.

(c) The children of the purchaser are preferred to the grandchildren or remoter issue; among such children, males are preferred to females, and an elder male is preferred to a younger; but females take together.

(d) The issue of the children of the purchaser represent or take the place of their deceased parents in infinitum, subject always to the third rule (c).

(e) On failure of the issue of the purchaser, the inheritance shall descend to the nearest lineal ancestor then living in the preferable line, - supposing no issue of a nearer deceased ancestor in that line to exist.

(f) Among the lineal ancestors of the purchaser, the paternal line is always preferred to the maternal.

(g) Where an ancestor, to whom, if living at the purchaser's death, the inheritance, would according to the fifth rule (e), descend, dies before the purchaser, leaving issue, the issue of such ancestor in infinitum shall represent him, according to the same law of succession laid down with respect to the issue of the purchaser; but with this addition, that those related by the whole blood to the purchaser, are preferred to those related by the half-blood.

(B) With regard to the personal estate, according to the Statute of Distributions (22-23 Car. II, c. 10) and the Intestates' Estates Act, 1890, it must be distributed in the following manner:

(a) One-third should go to the widow of the intestate, and the residue in equal proportion to his children; or, if they were dead, to their representatives, that is their lineal descendants; if there were no children or lineal descendants, then a moiety is to go to the widow and a moiety to the next of kindred in equal degree,[1] and their representatives; therefore the father succeeds to all the personal effects of his children who die intestate without wife or issue, in exclusion of the deceased; if the father be dead, and any of the children die intestate without wife or issue, the mother and each of the brothers or sisters of the deceased (or their representatives) shall divide his effects in equal portions.

[1] The propinquity of degree is reckoned according to the computation of the civilians (Roman jurists); cfr. Stephen, vol. II, p. 201.

(b) If no widow should survive, the whole estate is to go to the children; if there were neither widow nor children, the whole is to be distributed among the next of kin in equal degree, and their

representatives.

(c) No children of the intestate on whom he may have settled, in his lifetime, any estate in lands or pecuniary portion equal to the distributive shares of the other children, shall have any part of the surplusage (the remainder of property) with their brothers and sisters; but, if the estates, so given them by way of advancement, shall not be quite equivalent to the other shares, the children so advanced shall have as much as will make them equal to their brothers.

(d) When a husband dies intestate (after the 1st September, 1890) and leaves no issue, the whole estate, real and personal of the deceased now passes to his widow, if it be under a total value of 500 pounds; and where such estate exceeds that value, she now takes 500 pounds out of it, in priority to all persons entitled under the Statutes of Distribution (as above); and then, the residue of the personal estate is distributable according to the former law, that is to say, one half to the widow and the remaining one-half among the next of kin.

2° In America, the laws of descent vary according to the Statutes of the various States, and, as changes in this matter are frequent, it is necessary to take into consideration the latest statutes. The only general rule is that the property goes to the lawful descendants in the direct line, i. e. to the children, next to the grand-children, and so on, without distinction of sex. Where the descendants are in equal degree, each one receives an equal share, and therefore takes per capita; for instance, if there be three brothers, each one will receive one third of the inheritance. Where the descendants are of different degrees, - v. g. one child and two grand-children, - the grand children take per stirpes, or representation, i. e. inherit only such a share as their parents would have respectively inherited. To illustrate: A. leaves B. a son and two grand-children D. and E., sons of C, who died before his father; B. gets a half of the estate: D. and E. take one fourth each, because their father would have taken a half, which is equally divided between them. We conclude with the remark of Robinson, *Elem. Law*, § 126: "Each of the States has its own laws of descent, subject of course to occasional changes, and the only reliable source of information concerning them is the statute-books, in which they are contained".