THE DOCTRINE

— OF THE —

JESUITS.

BY PAUL BERT.

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— WITH A —

DEDICATION

TO MONSIEUR FREPPEL, BISHOP OF ANGERS.

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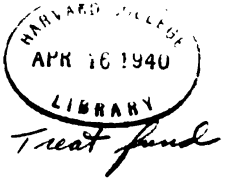

The members of the Society are dispersed in every corner of the world, and divided into as many nations and kingdoms as the earth has limits: division, however, marked only by the distance of places, not of sentiments; by the difference of languages, not of affection; by the dissemblance of faces, not of manners. In that family the Latin thinks as the Greek, the Portuguese as the Brazilian, the Hibernian as the Sumatran, the Spaniard as the French, the English as the Flemish; and amongst so many different geniuses, no controversy, no contention; nothing which gives you a hint to perceive that they are more than ONE. . . . Their birthplace offers them no motive of personal interest. . . . Same aim, same conduct, same vow, which like a conjugal knot has tied them together. . . . At the least sign, one man turns and returns the entire Society, and shapes the revolution of so large a body. It is easy to move, but difficult to shake.

Imago primi sæculi Societatis Jesu; published with the authorization of Mutio Vitelleschi, General; 1640.

These doctrines, the consequence of which would destroy natural law, that rule of morality which God himself has implanted in the hearts of men, and, consequently, would break all the ties of civil society, in authorizing theft, lying, perjury, the most criminal impurity, and generally all passions and all crimes, by the teaching of secret compensation, of equivocation, of mental restrictions, of probabilism and philosophical sin; destroy all feelings of humanity among men, in authorizing homicide and parricide, annihilate royal authority, etc., etc. . . .

Decree of the Parliament of Paris, 5th of March, 1762.

Notice

FOR THE THIRTEENTH EDITION.

The invitation that I have addressed in my preface (page 23), "to my enemies" has been heard. They have been kind enough to indicate a certain number of mistakes in the translation, which I have corrected in the present edition. I may safely say besides, that they were of no importance, except one, pointed out by Monsieur l'Abbé Danglas, who appears to have made a deep study of my book.

We believe after so many criticisms, coming from men so competent, and surely not blinded by their friendship for my person, that my translation may henceforth be considered sufficiently perfect and labelled *ne varietur*.

We will then let it stand as it is. However, it is my duty, in offering to the reader this 13th corrected edition, to thank those who have made themselves my fellow-workers, without inquiring about the feelings that have inspired them. I hope that their satisfaction will equal my sincerity in offering them the expression of my gratitude.

Paris, the 18th of May, 1880.

PUBLISHERS' PREFACE.

In sending forth the present work, it will not be necessary to say much by way of introduction. M. Paul Bert, who translated Gury's works from the Latin into the French (from which French this translation has in turn been made), was a statesman of great ability, having the courage of his convictions. He saw the harm done to society by allowing the Jesuits to become educators of the French youth, and struggled successfully to have them disqualified by law from management of such education. This book is a terrible exposure of the principles of these would-be teachers of religion. Their religious principles are simply statutable crimes, unnatural and repugnant to all good men; and how *we* Americans can let them train our children, when the great French nation across the water have decided that they are unfit to control the instruction of its youth, it is not easy to tell. Surely, we should have as much concern that our future citizens be not indoctrinated in crime, as the French.

The value of a book like that in the hands of the reader is, that it settles a controversy as to the moral worth of the principles of the Society of Jesus. Protestants have claimed that those principles are abominable; Rome, on the other hand, has said that they are holy and good. The book tells what those principles are: namely, murder, lying, stealing, perjury, and the like. And thus, out of their own mouth these bad men stand self-condemned.

As to the translation—there may be some errors; it would be wonderful if there were not. But we believe the sense at

least of the original is preserved. However, if the reader sees anything that should be changed to make it more exactly accord with the original, we shall be happy to correct it in future editions, upon notification. If the Jesuit does not like the translation here given, we will print his own rendering, provided we are satisfied it is true to the original text.

Hoping all will give aid as they are able to help extend the circulation of this book, we remain

THE PUBLISHERS.

Dedication

To M. FREPPEL, Bishop of Angers,

WHO HAS PUBLICLY CALLED ME A CALUMNIATOR AND A FALSIFIER OF TEXTS.

Monsieur l'Eveque:

To you I dedicate this book; and that is justice; for without you it would not have been born. On the morrow after my speeches of July 1879, an avalanche of pamphlets, letters, articles, either anonymous or signed with names more or less authentic, from Jesuits, or from persons pretending to be so, fell on me. I cared little about the vulgar insults, threatenings even, that were heaped in them, and returned to my studies without otherwise heeding

"This lot of insulters howling at my breeches."

As for you, coming into line, you have bluntly called me a calumniator and falsifier of texts. This, from a former colleague in Sorbonne, paid by the State, and of about the same rank as I in the administrative hierarchy, could not remain without an answer. To that answer I gave the form of this present book. Why? I am going to give the explanation in a preface which will interest others than you. And it is the public at large to whom I appeal, who shall judge between you and me.

You have deeply offended me, Monsieur l'Eveque; but, let me tell you, although that may be very indifferent to you, I bear you no grudge. It is clear for me that you have not been able to understand the value, applied to a man of science, of the expressions used by you.

Calumniator, falsifier, impostor, are, in fact, words of frequent use in the language of the thaumaturgists; and which they commonly exchange between each other, without appearing to attach any importance to them, by those who live on human credulity and

foolishness. Let them throw at each other's heads the famous "Mentiris impudentissime," nobody cares.

But, do you not know, Monsieur l'Eveque, what is a man of science; with what a pure worship he devotes his life to the seeking of the Truth, the eternal and holy Truth, which he invokes and pursues, in spite of the anathemas of bewildered superstition? Do you not know that his respected word cannot be impugned? Do you not know that the least suspicion of his veracity inflicts on him the most deadly injury; that lying is for him, what prevarication is for the judge, and cowardice for the soldier? No, surely, you are not accustomed to speak to men of science.

And now here are the documents of the prosecution. Your "eminent moralist," as you call him,—that Gury the text of whom you accuse me of having mutilated, and falsified the intentions, is going to be appreciated by every one. I went to seek him in his den; I have stripped him of the impure Latin behind which he was hiding; I have reduced him to his simplest expression; and I bring him forth before the public, in the light of day, ashamed of his nakedness and blinking in the rays of the sun.

Compare now my requisitions of the 5th and 7th of July with the text of the Jesuit, the justificative document. Calmly I wait for the judgment, having remained far beneath the truth.

Ah! the Jesuits called me a falsifier, a calumniator; and you put yourself, Monsieur l'Eveque, at their head or in their train. It matters little! Ah! Bazile has veiled his face, Tartuffe has blushed at last! They who made of calumny a system, and of lying a theory, they felt the whip, and cried: Imposture! Who were the impostors? Themselves!

Ah! It is their usual game.

Who has not seen in the streets of our large cities, running before a group, bound to overtake him, a frightened man, crying louder than all: "Stop thief!" Who is he? The simpletons alone are deceived. . . .

Monsieur l'Eveque, to you I dedicate this book.

PAUL BERT.

Paris, the 27th of February, 1880.

PREFACE.

I.

Aim and Plan of the Book.

On the 21st of June, 1879, was opened, in the Chamber of Deputies, the discussion of the scheme of law touching "Liberty of Superior Education;" a scheme in which the most important clause (Article 7), interdicted teaching in all degrees to the Jesuits, and other members of religious congregations not recognized by the laws of the State.

On that day I made a speech,* in which I tried to demonstrate, from a purely political point of view, the dangers of an education given by that sect, to the tranquility and moral unity of our country. Where that sect has been tolerated, it has always carried with it the germs of civil war; that all those countries have expelled and cursed it; and that, according to the terms of existing French legislation, its members ought to be immediately expelled.

A few days later, the Minister of Public Instruction brought to the tribune, to second the same proposition, some quotations drawn from books of history by the Jesuits, which excited the indignation of the Chamber, and clearly proved the imminence of the peril.

This called me again to the Parliamentary stage, and forced me more deeply into the question. The historical judgments and previsions are but one of the applications of morality; it is, then, the Jesuits' doctrine of morality that I attacked and summoned to the bar of the Chamber, on the 5th of July, 1879.† Briefly, I recalled the eloquent attacks of Pascal; then, passing to a more

* See page 495. † See page 537.

recent time, I borrowed freely from the justificative documents of the famous sentence rendered by the Parliament of Paris on the 5th of March, 1762; at last I came to modern times, and exposed the persistence of those odious doctrines, together with their introduction into the teaching not only of youth, but even of the smallest children.

From a devoted friend, I received next day some interesting extracts* from the works of the Jesuit Gury, who was then completely unknown to me. I must confess, I took advantage of them, and inserted them in a reply to M. de la Bassetière.†

The effect of my speech on the 5th of July was, I may say without vanity, truly extraordinary. The emotion in the Chamber was intense. A newspaper which published it in *extenso*, sold more than 100,000 copies, solely on account of it. I received numerous letters of felicitations and even of thanks; friendly hands were stretched towards me from all parts of France, Belgium, Switzerland, Canada, and from all the countries invaded by the sons of Loyola, under cover of silence and shadow.

It was not the fault of the Jesuits if the picture had no dark side, and that the deep joy I felt in being the recipient of so many marks of sympathy was not troubled by the violence of their insults and threats. But their arrows fell short of the mark; scorn made me insensible to their attacks.‡

The most moderate among my defamers said I had made use of

* Unfortunately an error of the copyist was found, for which I have been harshly reproached, although in reality it was of no importance whatever. See page 586.

† See page 582.

‡ Reasonable people who do not know the resources that hate furnishes to the devotees of Rome, will never understand, cannot have an idea, of the insults, of the vulgarities, that the Jesuits, as well as their natural allies, poured over me. It was an impotent rage: *spumat rabies vesana per ora*. A medical newspaper of Vienna, which had honored me in publishing a long biographical notice, sums up all these products of Catholic charity in the following terms: "The Catholic papers call him a libertine, a shameless materialist, a man infected with all the vices and turpitudes of Paris, a shame to the French tribune, a wretch, a rake, a mischief-maker! One can see by this furious inundation, that Paul Bert has struck right in the bull's eye." And I can affirm that the Austrian paper has remained far beneath the reality. I mention also the more characteristic aggressions for which the Police Court of Paris has just punished the authors.

falsified texts, that I had falsified some of them myself. Falsificators Pascal, Dumoulin, Pasquier, La Chalottais, and so many others! Falsificators, the Commissaries of Parliament! I found myself in good company.

I would not have been otherwise disturbed, if, among my accusers, I had not found some ecclesiastical functionaries, besides two or three bishops, one of whom, M. Freppel, called me directly to account, using the harshest of terms.

I resolved to answer, and began a pamphlet threatening to become very extensive. It was, up to this time, an exposure of Jesuitical doctrines; an accumulation of new citations drawn from the very sources, accompanied by keen comments and indignant tirades; in brief, an imitation more or less happy of the immortal Provinciales.

But my plan was suddenly changed, after a glance at the catalogue of the National Library. I saw that after an ephemeral success, my book, on that subject, would have the same fate, and fall into the same abyss where so many books sleep the sleep of forgetfulness. Numbers of those works are marvels of independent spirit, logic, erudition, eloquence, and the Provinciales themselves have not escaped oblivion.

How are we to account for and justify such public and general indifference? What can be the cause of it? How is it possible to escape it? Whence comes the uselessness of so many efforts often so powerful? I struggled with the problem, and I believe I have solved it.

I suppose a book conceived such as the one I had at first made. I adorn it with all imaginable qualities: the bitter raillery of Pascal, the highly-strung indignation of La Chalottais, the sensitive eloquence of Michelet, the winged poetry of Quinet. I hand it to a wise, moderate, liberal man, in whom the Jesuits cause a certain and secret apprehension, but who refrains from appearing an enemy of religion: this species is not rare, it constitutes to-day almost the totality of the French "*bourgeoiseie;*" this man must be convinced before anything is done, firstly, because it is his own opinion, the public opinion; then, because he has children, with prowling Jes-

uits around; and if his wife belongs to them, his daughter is already in the meshes, and his son threatened.

Our good man opens the book and reads it to the end; I admit that he is at first interested, then indignant. Call on him a month later.

"Well! You have read! What quotation! It is odious, astounding!"

"Yes, yes," he answers; "but, do you see, I have thought about it; it does not prove much. They are very old, those quotations. Those men of the sixteenth, seventeenth, eighteenth centuries even, could not have on morality, any more than on politics, the same ideas that we now have. To reproach the Jesuits of Lhomond Street for the maxims of Tolet, Emm Sa, Fagundez, Suarez, Filliucius and so many others already dead in the time of Pascal, is to stretch the rights of polemic; it is to mix up a dead theology with the actual, living morality. Periods of history would be systematically confused! As well compare the League with the French Revolution and make the one responsible for the other.

"The language, moreover, is quite different: the gross vulgarities of those times would in our days rouse indignation. One could not reprint Sanchez! Think of Rabelias, of Brantone, the delight of ladies at Court! What princess to-day would pass the whole night, like young Mary of Prussia, copying "La Pucelle," and would boast of it? Those ignominies of old casuists have lost their effect in these times of ours.

"Further, you can not put any confidence in those extracts. I know well that the author has copied them accurately; the rascals who accuse their adversaries of falsifying the texts prove only that they are mean enough to do it. Besides, one can hardly verify them; the books are rare, and can be found only in large libraries. Then, the author belongs to a party, he is a soldier a fighting man; he had to write accordingly. The Jesuits have written much, and a great many volumes; hundreds in folio form. One looks through them in every corner, with no distinction of epochs, countries, characters; one selects phrases, parts of phrases, some odious things, I admit, that startled me. But what of it? All that is artistically arranged; lines written centuries apart are

brought to complete one another; they are prepared and framed in a skillful exposition. What is more serious, they are torn from their former setting; they are isolated from the principles constituting their philosophical value, or from the application which gave them their practical utility. It is the difference between a herbarium and a green field. Who knows if the rule has not been taken oftentimes for the exception, the incidental phrase for the principal, the reserve for the principle; add to this the unavoidable errors, the alterations of texts often quoted from former cuttings, and at last, errors of translation, inevitable in such arduous matters. . . . No, decidedly, I cannot be convinced; it is skillful arguing, I admit, and sincere, I am sure of it; at least, so far as it is possible for a party-man to be sincere. But the more I think of it, the less I agree with it. It is again the eternal Truth: 'Give me four lines from the hand of a man, and I can have him hung.' Yours is a curious book, but it proves nothing."

Such is his defence: many times did I hear such language. Surely, this is not hard to refute; but the book itself cannot do it. Besides, you will very seldom be listened to; the reader has made up his mind; he has got rid of an irritating problem; perhaps he has found the means to avoid household quarrels; to discuss with him would be as wise as to pull out a nail by striking on its head with a hammer.

What is to be done, then? Ask him, and he will answer you.

"What is necessary, you see, is to show me that the modern Jesuits, those with whom we live, those to whose school my wife wants me to send my son, teach actually the same doctrines, speak the same language, that the old ones spoke. I readily admit they were not worth much. We know truly that none of them can publish a book without the consent of their Superiors, and so no personal opinion can be entertained. I have even read somewhere that they boast to have but one language and but one thought, so that one of their generals said:

That they would be what they are, or they would not be.

"But all these are general maxims, things written for effect, for

show, if you will allow me to say so. It is said also, that they are so skilful, so conciliating, so insinuating, so supple! There is contradiction in the two ways of looking at them. As for me, I believe they stand on the level of circumstances, and that they are living up to the spirit of modern times.

"I know full well that it would not be difficult to clear up that question. There are books quite recently written, in which Jesuits, actually living, expose the compendium of their doctrines. This is what I would like to read! There, I should have a true idea of things, seeing them well set in order, without the intervention of a third party, always suspected. But they are big volumes, very tiresome, they say, and I have no time. Besides, they are written in Latin; and, between us, my *consciones* is pretty rusty, and it has never been my forte.

"What I would like is a modern book, a complete book written by a Jesuit, having full authority, and having been translated without any abridgment, cutting off only what does not interest me; for I care little about metaphysics, and still less about theology. That would be indeed to render a great service to myself and to many others. We would read and judge for ourselves, without needing help from fabricated phrases; we are a people with common sense and honor."

The solution was found, and our *bourgeois* was right. Yes, the authors who have written about Jesuits have put too much self into their books. We must change all that, and replace the subjective method by the objective one.

This was understood: I threw my work into the waste-basket, after having gathered a small part relating to the alterations of text of which I was accused,* and I set about to find a Jesuit who might answer my purpose.

I found him easily; indeed, Gury was all that could be desired. He died quite recently, after having taught morals for a long time in the college Romain, the Jesuit's college in Rome. He has published two voluminous works in two large volumes, each represent-

**M s falsifications*: Letter to the Director of the *Republique Francaise* (see 29th of August, 1879) published in a pamphlet by the Editor of the *Petite Republique Francaise*.

ing ten times the matter treated in the present book, *Compendium Theologiæ Moralis*, and, a *Casus Conscientiæ*. Those books have had several editions; the last one being published in 1875: they are in the hands not only of all Jesuits, but also in those of a large number of priests; and, by the testimony of M. Guibert, archbishop of Paris, they have happily transformed, in the last thirty years, the spirit of the French Clergy.* So, in Gury was to be found the two prominent qualities required, actuality and authority. Besides, it was from him I had quoted, about whom I had committed an involuntary error, and him I was accused of having calumniated. There could not be any possible hesitation.

I took then the four volumes of the last edition,† and began the most ardous of works to compile the present book. I proceeded thus:

The *Compendium* is a theoretical book, divided into a series of treatises (on human actions, on conscience, on laws, etc., etc.)

The *Casus Conscientiæ* is a compilation of cases, species, anecdotes, which constitute as many problems on theological morality: they are grouped by treatises corresponding to those of the *Compendium*. I began to dismember, so to speak, those two works, and melt them into one, each treatise of the *Compendium* being followed by the cases relating to them, each theoretical exposition followed by its practical application. Different typographical symbols help to recognize them at a glance.

Let us see now the mode of abridgment.

For the *Compendium*, I have carefully preserved all the general aspect of the book. Each treatise is divided into parts, sections, chapters, articles, paragraphs; I have reproduced the same order; I have even kept the numbers which correspond to each new idea, in each paragraph. In a word, the index is absolutely intact. This done, I took care not to analyze anything whatever; there is not, in the whole book, a single line written by myself.

* "There is no doubt that the two works of P. Gury have powerfully contributed to extend among the French Clergy the easiest solutions of probabilism." (P. Matignon S. J.: *Etudes Religieuses*, 1866).

† Revised, corrected, augmented, put in order by Henri Dumas, S. J.; second edition. Lyon: Briday, 1875. *Casus Conscientiæ*, fifth edition. Lyon, Briday, 1875.

When the saying of the casuists seemed interesting, I translated it textually and completely; otherwise, I set it aside and replaced it by a line of dots whose very changeable value is easy to measure by the number of missing numbers.

In that distinction between what appeared to me worthy of reproduction and what I thought better not to mention, I was guided by very diverse considerations. At first, I systematically omitted all that had but a purely theological interest or ecclesiastical discipline. The treatise on Theological Virtues, Church Precepts, Sacraments, (principally those of Baptism, Confirmation, Eucharist, Extreme Unction, Order,) Censures, Irregularities, Indulgences, have been very much shortened. In the other treatises, I have retained only what may interest the laity, viz: the general principles, and their most important deductions, the exceptions so often destructive of the rule, reserves, subterfuges; also, occasionally, the odd questions, the odious vices, that Gury borrows from former casuists, or invents; for he was a man of a very fertile imagination. But bear in mind that I have not translated only that which seemed to me reprehensible; far from it, and I am ready to take the responsibility of a great number of the propositions reproduced further; those not mentioned seem also to me very often blameless. My aim has not been to expose an extract of bad or dangerous maxims; but to give an outline, as complete as the method permits, of the Jesuitical doctrines of the present day.

As for the cases, a sort of *Anas*, often fastidious, but sometimes strange and ingenious, whose multiplicity in the oral teaching gave, it seems, to the Lectures of Rev. Father Gury, a particular savor, the choice has been a great deal easier. I took at first a good part of those on the Jesuitical solution not in accord with the lay morality; then, those which are interesting in themselves; either because they reveal the crafty dodges that often take place in the confessional between confessor and penitent; or because they set in action some grotesque superstitions; or because they show the proof of the erotic preoccupation which haunts, in all circumstances and in all places, the imagination of

the Jesuit, and compels him to introduce the "*res venereae*" in all casuistical matters.

A certain number of notes are added to the text. Some of them demonstrate the persisting accord that exists between the ancient Jesuitical rules, and the actual doctrine formulated by Gury.* Also it will be clearly seen, that in spite of certain attenuations of form, imposed by the spirit of the times, the Jesuits have renounced none of their ancient doctrines. Not even those

* The texts that I quote are borrowed from the celebrated "Extracts of the dangerous, and as pernicious assertions of every sort of the so-called Jesuits, verified and collected by the Commissaries of the Parliament of Paris 1762." 1 vol., 4to, of 544 pages." From this volume I drew the numbers of my citations.

It is known that the Jesuits have tried to contest this formidable accumulation of facts, in taking advantage of a certain number of errors of no importance, which they have collected and compiled; and this fearful number, 758, they zealously show up before the world. Here is how they were classified after the answer, in four voluminous books, edited by the R. F. Grou and Sauvage:

In the Latin extracts.

Errors against the letter and the sense of the text of the author	41	
Suppression of phrases in the text	261	
Mutilation of the text	61	
Mistakes	94	457

In the French version.

Grammatical errors in the Latin construction	16	
Alteration of the sense in the words	220	
Alteration of the sense in the phrase	65	301
		758

In all justice, a defalcation of the errors in the French version ought to be made; the "Extracts of Assertions" give the Latin text in juxtaposition to it. Then, looking more attentively, we see that the "Suppression of phrase," and the "Mutilation of text" in Latin, have absolutely no significance in the immense majority of cases. The Jesuit, to sustain his accusation, is obliged to drown himself in page after page of explanation; this indicates that his answer, which ought to have been so brief and so simple, forms four large volumes, 4to.

Again, the Archbishop of Paris, thinking to be able to find twenty-seven errors in those texts, the Parliament named in 1764 a numerous Committee, who carefully received the questions and answered these allegations.

From all this, there remained only one more proof of the impudence of the Jesuits. The seven hundred and fifty-eight falsifications are to be added to the twenty-four with which I have been reproached, one among these being the falsification of the name of Casnedi, being written Cassendi by the proof-reader of the "*Official*."

denounced by Pascal, which were condemned in 1679 by Pope Innocent XI. Other notes show those doctrines used in the teaching of childhood by recent catechisms, and especially in the one by "*Grand Vicaire Marotte.*" I took this catechism as a type, being the official book of our primary and normal schools. Many allusions to recent facts are found in them, and one may safely consider these facts as logical applications of the Jesuitical maxims.

The analysis of Gury's books under the conditions indicated above, do not constitute the whole of the present volume.

At first, I added to it the analysis of a work (page 448) extensively spread amongst the clergy of the South of France, perfecting on one point the work of the Jesuit. It is a "Dissertation on the 6th and 9th Precepts of the Decalogue," from the authorized pen, so dear to the Jesuits, of *Abbe Rousselot*, professor in the grand Seminary of Grenoble, and principal author (after Mademoiselle de la Merlière) of that shameful comedy called the apparition of "*la Salette.*" Here I made numerous abbreviations and left a good deal of Latin, for special reasons that every one will understand. I beg pardon for having almost completely translated, although softening the terms, the corresponding passages of Gury! I felt that it was necessary to show to everybody what degree of aberration the casuistic mania may reach; and how, in reality, the odious Sanchez is living still, if not perfected. And when we know that this book is for the special use of young confessors and pupils of grand seminaries, we may well ask ourselves what must be the effect of these descriptions and meditations on the mind of youth.

A second addition (page 486) is the list of the 65 propositions condemned by Pope Innocent XI. on the 16th of March, 1679. Pascal's calumnies, as the Jesuit's saying is, will have some practical value; because most of these propositions had been taken from the Jesuitical text, and denounced in his "*Lettres a un Provincial.*" From that time the Jesuits have avoided condemnation with an admirable skilfulness, and set on foot all those propositions that might be of practical interest for them as soon as they were overturned.

At last I close this book, by the reproduction, after the "*Journal Officiel*," of the speeches which have been the cause of the present conflict.

Such is this book. The common sense and the good judgment of the reader will decide. Let me add only one last observation.

Errors of translations may have escaped me; it could not be otherwise in so tedious a work, done so quickly, with a Latin so strange and oftentimes so obscure. I depend on my enemies to point them out, and beg them instantly to set themselves to work, in order that I may profit by their criticisms. My excellent publisher has kept the stereotype plates in view of these corrections.

As for these errors, as well as for other similar ones, I can do no better than to put myself under cover of a very reasonable passage of the Jesuit publisher of the famous "*Reponse aux assertions du Parlement.*"

"Accuracy and precaution must be our first duty in such a work, where it is difficult that no errors could escape us which will not be infallibly pointed out and magnified by our enemies in the eyes of the public, and treated as capital faults, no matter how light they may be. We are convinced that the work itself leaves no ground for contest, and that all the resource that remains to them will be to attack a few oversights which will not better their cause."

This caution was singular from his pen. It answered in advance all its complaints and the work of the Commissaries of Parliament. I adopt it for myself in its true light.

The books of Gury are at the disposition of the public at a very moderate price, so, those who are tormented by the critical spirit, may easily alleviate their thirst for truth by comparing the original with my extracts and translation.

II.

Summary of the Book.

The first impression felt by a lay reader, in looking over a Jesuitical Compendium, is wonder and dread. This book is all, or at least pretends to be all: canon law, civil law, penal law, even commercial law, jurisprudence, and also divine and human science, all may be found here. One feels that the disciple who in the course of his studies has been thoroughly impregnated with it, who carries it with him out from the Seminary, often into the very heart of the country, where, by the side of the breviary, of the Catechism and Confessor's Manual, it will form all his library, must persuade himself that all is found there which will guide his conduct towards men as well as his relations with Heaven. Nothing escaped the casuist, and on all things the priest will find the ready prepared solution; he will be able, book in hand, to discuss the origin of morality, or the validity of trusts, the Sacrament of the Eucharist, or matters of Exchange. Society can have no hold on him, nor teach him anything; everything has been foreseen by his chiefs.

When from this he comes to the study of a part of that Encyclopædia at once profane and sacred, the layman is struck by the absence of any general principle, of any rule comprising a considerable number of facts or ideas. Everywhere, on the contrary, a need of curtailed definitions, and above all, of divisions and classifications, which crumble the principle, shorten, chill, and cause the bringing up of a large number of small aphorisms, that will be later easily opposed to each other. Let us take for instance, the chapter on conscience. Immediately after a definition which seems the very negation of free will, we have the divisions: Conscience is upright or erroneous, certain or doubtful, etc., etc. (page 61); then the subdivisions and secondary divi-

sions: vincibly erroneous or invincibly erroneous; invincibly erroneous which commands, vincibly erroneous which permits, etc., etc. As much as to say, the true truth, the doubtful truth, the false truth. These sublime words lose thus all elevated and holy signification, and this is just what the casuist is aiming at: he will soon have the best of it.

A third surprise for the reader not used to that sort of books is the facility with which, out of an excellent principle, he deduces the most monstrous consequences. It is always the old sophism about the splitting of a hair. Circumstances, added one to the other to the primitive truth, like water added drop by drop to generous wine, transforms the one into a sour beverage and the other into scandalous error, without knowing at what precise moment the transmutation happened. One feels full of anguish and drawn towards a fatal declivity, the tufts of grass tearing off under our crisped hands. It is the strength of the casuist, and the *ne plus ultra* of his art: he knows that, at last, tired and bruised, the patient will roll into the abyss.

And what shall he find there? The downiest of beds, soft as the mire: probabilism. This is the true pillow of doubt, but not in the sense pointed out by Montaigne. No more principles! Their fragments alone fell into the abyss, and over each one of them a casuist cavils and disserts. For any question, he holds the solution well in hand; he offers it to the passer-by; and as he is, according to the formula of the Jesuits, doctor, honest man and savant, his opinion becomes probable, and the passer-by may choose, in the tranquility of his erring conscience, what best suits him, practically, between all these solutions handed to him by those doctoral hands. Remark, that if he avails himself of one to-day, he may hold to-morrow the contrary opinion, if it is his interest to do so (pages 69, 77, etc.) The confessor, however, master in so many things, can do nothing about it, and he must submit and absolve when the penitent can refer to the opinion of a director, had he sought him for a long time. (Pages 70, 75, etc.) How is it possible not to rejoice at such a convenient doctrine, and echo the thanksgivings of Escobar: "Verily, when I consider so many diverse sentiments on the matter of morals, I think it is

a happy dispensation of Providence, such a variety of opinions helping us to bear along more agreeably the yoke of the Lord!"

I do not insist on Pascal's revengeful imprecations, which vibrate yet in all memories. But it will be sufficient to look over the present book to see that the Jesuits have in no point renounced the famous doctrines of probabilism, (pages 65–72,) and of philosophical sin, cause of the invincibly erroneous conscience (page 62–72.) This may have burlesque or monstrous consequences.

See what becomes in the skilful hands of the Jesuits of this evident and primordial principle: "When there is no wicked intention there can be no error of conscience." While there is no fault, says he, there is no obligation to compensate an evil committed quite involuntarily. Then he brings the case of Adalbert, (page 56) who, wanting to kill his enemy Titius, kills his friend Caius; and he gravely declares that Adalbert, being in nothing culpable of the homicide committed, can not be held to any restitution by the heirs of the one he has assassinated.

A step further: let us take another principle, infinitely less sure but admissible in practice under reserve, viz.: that one is not obliged to denounce one's self for a wicked act that one has committed; and let us introduce it in the following category. We have then the case of Julius (page 228), who inadvertently drinks the poisoned wine offered to Didyme by Cursius in order to kill him. Cursius, says the casuist, was not obliged to warn Julius, for it would have been to denounce himself; and he is not held to indemnify his heirs because he has no intention to kill him; he has been the occasion, not the efficacious cause of the death, and Julius killed himself! Stretching the point a little further, one can feel that Cursius might sue for damages!

Another principle, better yet: "One is held to indemnify but the wrong that one has really caused." Then, if Jacob (page 242) has killed Marc, who was ruining his family through luxurious living and drunkenness, he owes nothing to the family of his victim, because he has not wronged it in any way. Moreover, he has been of service to that family, having prevented a more com-

plete ruin! If we draw the consequence, he might ask for a reward!

We can see that nothing prevents such a way of looking at these principles: of that method, frequent examples are given in the present book. I shall not indicate any other; I will content myself to make here a remark of the highest importance.

Gury complains somewhere (page 246), with a charming naivete, "of the difficulty that exists in harmonizing the laws of conscience with those of the civil code." I will say that this is easily understood; and that, *a priori*, there must be very often important differences between the decision of the judge of conscience, that is to say, of intention, such as the priest must understand, and the solution of the lay magistrate, in fact, otherwise of the civil law in principle. But in what sense must we understand the difference? In the sense, it seems, of a greater severity on the part of the religious judge. In fact, the civil magistrate cannot condemn, except when the act is added to the wicked intention, the commencement of its execution. Rightly, the civil law, which has not for its mission to appease the conscience, but to maintain order in society, is obliged to pass condemnation on many acts that ought to be condemned by the religious judge.

Is it thus that the Jesuits view the question? Far from it; examples abound. Here is a thief: he must indemnify, there is no doubt of it, and the civil magistrate will constrain him by all ways and means. But he consults the casuist, and he authorizes him to defer the restitution, when he cannot do it "without losing a position legitimately acquired," that is to say, acquired by theft (page 201). Here is a simpleton, Simplicius, who let, foolishly, his borrowed horse be stolen from him. "So much the worse for you," will say the civil judge; "you shall pay for the horse." "Oh, no," will say the soft casuist; "Simplicius is so stupid!" (page 230). Here is Quirinus, who enters a store during the night to steal, holding a candle: a cat jumps; the candle falls, and sets the house on fire; everything is burned. What will be the decision of the civil judge? I don't know; I know, however, the lay morality in such a case: as for the casuist, he does not hesitate: "Poor Quirinus! He owes nothing; it is not his fault, it is the cat" (page 196)!

Here is Zephirin, who digs a hole in his field; and who, knowing that Andre is going to pass that way, takes care not to warn him. Andre falls and breaks his leg. The civil judge will lose his suit in this case, but the moral judge! have no fear: Zephirin owes nothing (page 225.) There is Phileas, a seminarist, who let one of his comrades be expelled as culpable of a theft that he has himself committed; the consequences of which are grievous for the poor Albin. Here again the civil judge can do nothing; the Jesuit, without hesitation, exempts Phileas from all indemnity (page 227.) Olympius, during an auction sale, went into coalition, liable to fine and even imprisonment by the civil judge; the casuist absolves him (page 287.) At last, not to multiply the examples to excess, we come back to Adalbert, the murderer of Caius: we see that surely the civil judge will condemn him to pay damages to the family of his victim; and perhaps, as having attempted the assassination of Titius. The Jesuit washes his hands of all this: Adalbert did not do it on purpose, that is sufficient.

I call the attention of the reader to this general observation: he will find in the book a number of precepts or cases which are, without doubt, in harmony with the spirit of the civil law, but to that the law permits rather than approves, and which it commands, not on account of the honesty of the act or formula, but because there would be grievous social inconvenience to proceed otherwise. I will mention only one: On his death-bed, a father commands his son to make a certain gift. Truly, in civil procedure, there is not here any will, and it is a case calling for the judge of conscience; well, the casuist discharges the son of executing the will of his dying father (page 278.) In a word, the casuist always accepts the solutions of civil law when they are in favor of moral culpability; but when the guilty one is condemned by them, the Jesuit strives to find a loop-hole through which he may escape.

It is one of the features of Jesuitical casuistry to always take the part of the sinner, and this is not the least cause of his definite triumph over the Jansenist's rigorism. Between the thief and his victim the Jesuit never hesitates: he takes the part of the thief. See the examples I have just related. When it is a question of

avoiding restitution, he is all honey for the thief; he must not be forced to be "deprived of his servants, or friends;" but the victim, meanwhile, may quietly die of hunger: he exempts Simplice, without any compensation to the stableman who loses his horse; for the merchant, although innocent, burnt out by Quirinus, he cares not a straw; neither for Andre and his broken leg; nor for the poor devil of whom Olympius has clogged the sale; neither for Albin, disgraced and ruined; nor for the innocent heirs of murdered Caius. No; his sympathies are elsewhere. Do you wonder that Parliaments have expelled him?

A great deal might be said about *secret compensation*, so energetically condemned by the civil law and by lay morality; so completely approved, and oftentimes so spiritually taught, by the Jesuit (pages 88, 187, 272, 282, 291). The theory and practice of this thieving art is found in many passages of the book, and one shudders in thinking how many deluded persons such teaching has sent before the criminal tribunals when it fell on well-disposed natures. What of the theory of theft, so-called? Its gravity is according to the fortune of the victim; and not, as in our codes, according to the circumstances of escalade, infraction, etc., etc. (page 183). And the light theft, which is not passable for damages! And indulgence for thievish servants (page 184)! And necessity excusing theft (page 184)! And the possibility of interesting God for the success of a theft (page 103)!

What yet remains to be spoken of? Absurd superstitions (pages 111, 112): the deviltry of turning tables, for instance (page 113); diabolical possession (page 113); carnal intercourse with devils! Political formulas: kings holding their power only from the church (page 78)! Doctrines of the most savage intolerance; heretics considered, though rebels, as subjects of the church, and under its laws (pages 80, 356, 382); terrible phrase, which logically calls for the *auto da fe;* their children baptized in spite of them (pages 329, 346); interdiction to notifying a Protestant minister that his co-religionist is dying and calls for him (page 108); audacious infractions of the prescriptions of civil law taught and justified (pages 83, 311, 326); donation for causing death (page 253); denial of the equality of shares (page 253); state and property

of the monks (page 311, 325) ; substitution and trusts (page 254) ; dissimulation of inheritance (page 253) ; fraud of duties (pages 91, 205), etc ; the difference of gravity of sins according to their being advantageous or not ; wonderful Jesuitical discovery (pages 127, 136) ; the murder of an innocent one, the excuse for which is hidden under obscure and fearful conditions (page 137) ; the theory of denunciation, commended by the constitution of Ignatius (Reg. Comm. XX), introduced in the lay-world, and highly recommended (page 104) ; destruction of books under interdiction, and their theft openly preached (page 106) ; contempt for paternal authority, when it is a question of entering into religious orders ; and ferocious heartlessness towards parents (pages 131, 133, 319) ; the art of cheating at play (page 297) ; the legitimacy of slavery and the slave-trade (page 177) ; illegal opening of bodies (page 330) ; the most brazen-faced usury, hidden behind the prescription of the church which prohibits it (pages 255, 259, 261) ; * violation for money of a promise of marriage (pages 373,

* I cannot resist the pleasure of analyzing the interesting chapter relative to usury, that is to say, lending at interest. We know that the Catholic Church proscribes it absolutely, and we like to see here an application which, in spite of its exaggeration, is an honor to the Christian moralist exercising the principle of charity. Let us see how the casuist has done away with the difficulty : this was important, for the Jesuits were admirable manipulators of money. But that was difficult, in face of proposition 41, condemned by Innocent XI.

So, it is forbidden to me to lend you a thousand francs that you must give me back in ten years, to tell you : " Each year you will give me fifty francs of interest."

But first, in lending you that money, I may suffer a certain loss ; I know not exactly what, but I have to foresee it. It is just then that I should take my precautions, in stipulating, for instance, that in ten years you will give me back, not a thousand francs, but two thousand francs ; for I deem the loss suffered by me worth a thousand francs.

Then, that borrowed money I cannot use any more in my business or in my industry ; I would have put it to good usage. I estimate at a thousand francs the benefit I might have realized with it during ten years. You have prevented me ; it is then another thousand francs that you will have to give me at the fixed time.

But this is not all. Who is guarantee that you will pay me back? Ten years—it is a long time. I run a risk there ; that is well worth five hundred francs, in good conscience. Besides, you are not quoted as very solvent.

Last, it is well understood that you will pay me at the fixed day. But if that were not the case? If you were late in your payment? Think that I depend on that money at the precise moment. If you do not pay me then,

404); the injustice of the civil marriage (page 380), the numerous causes for the destruction of the marriage tie (pages 376, 384); scorn for the people, and crawling before the great (pages 103, 384, 400, 412); false witness (page 157); lies (page 165); perjury, mental restriction (page 156); the nullity of marriage with infidels or heretics; distinction between the value of legacies not under legal formalities; void if profane, valid if pious (pages 252, 280); the chase in prohibited time (page 180); the audacious clerical impertinence of taking up the old thesis that the clergy are not under the civil law (page 80), and setting in the first rank of crimes, the fact of having (even as a child) struck a priest, or violated the monastic claustration.

But it would take a long time to exhaust the matter, and the reader will do me the justice that I did nothing but to graze the subject. I leave him to his own reflections; and he shall judge if the condemnation of the Parliament of Paris, inscribed in epigraph on this volume, can be applied justly to the modern Jesuits.

But yet, I beg to call his attention to the error with which Gury seems impregnated, like all the casuists who preceded him. That lubric licentiousness of imagination is seen in two different manners: first, in the study of what they call the "shameful matters," that is to say, the VIth and IXth Precepts of the Decalogue (pages 142, 153), and the duties of married people (pages 388, 399, 425, 435);* it is manifested by a luxury of lascivious researches, a love of obscene details, an invention of unclean circumstances,

it will be ten francs a day for the delay: take it or leave it at your pleasure!

This is more than necessary, it seems: and the poor borrower would prefer a good deal to pay 5 per cent out of his capital; so the Casuist's pupil might be done for, in spite of all his ingenious foresight. But be easy: if the civil law allows the loan at interest, that is to say, the limit, as this takes place in France; immediately, that practice, solemnly prohibited by the Church, "in virtue of natural, divine and ecclesiastical rights," becomes permitted; and more, the lender may stipulate the interest of the interests; besides, he can exceed the allowance of the legal rate if his debtor is not in great distress: at last let his mind be easy, if he is a banker, because he may exact something from everybody in remuneration for his trouble.

Here is, if I am not mistaken, a situation very much simplified; but what would Benoit XIV. say to it? and what would become of his "Bull Vix pervenit" against the loan at interest?

* See also Rousselot, page 449-485.

which leaves far behind all that has been imagined by the authors of Justin and of Gamiani.*

But what is far more interesting, is to see the genetic prejudices haunting, in so constant a manner, the mind of the Jesuit, that he is dominated by them in many cases where they have absolutely nothing to do with the subject. Is it a question of invincible ignorance? he takes for an example children "*qui egerunt de se illicita*" (page 49); of the indirect will? it is Lubain, with his carnal temptations (page 56); an effect of violence? it is Suzanne (page 51), or Bertine and her master (page 57); of the erroneous conscience? it is Ferdinand, George, Gustave, a child ten years old, and his "*tactus turpes*" with his first cousin (page 73) etc., (see especially the cases on confession). Is it a question of the general theory of intentional sin? the only example that comes into his mind is, that "in confession one accuses one's-self of fornication: it is necessary to declare the parental degree, affinity, marriage, chastity, which relates to the person in question" (compendium, Vol. I., No. 167). Then, with what ingenuity he details the reserved cases (pages 351 and fol.), opposition to marriage (page 412 and fol.), with the unclean story of Sudimille (page 412); together with hundreds of cases cropping out from all parts of the book.

What shall we say of the shameless way he treats the marriage question; conjugal duty; marriage consummation, petition and surrender to duty? He thinks of nothing else. And what skillful solutions, in order to have mastery over the husband through the wife.

But the most interesting fact that is brought out in this part of our study is, the deep scorn that the Jesuit has for woman. In the daily practice of life, there is no kind of mystic caresses, nor wheedling undulations of voice and gesture, that he does not resort to, in order to seduce her. Here are the mysterious and

* Do not wonder, after this, that those who are impregnated with such a doctrine are drawn to the most monstrous results. I have pointed out in my report on the proposition of law of M. Barodet (primary instruction) that in the last two years, our tribunals little suspected of partiality, have condemned for crimes and attempts against morality, about four times more (in proportion to number) congregational teachers than lay ones.

nocturnal meetings; where they go, with eyes down-cast, under the veil, and grazing the walls, with sighs, predications, music, incense, intoxication of the inferior senses, in the depths of obscure and sonorous chapels, where the step grows furtive, and where the *lustre*, hung high, hypnotizes. Elsewhere, the propaganda or charity societies confraternities, where the Jesuit knows how to set in motion the multiple attractions of vanity in playing some part—a need not satisfied by modern society,—even in the noblest aspirations of the heart of feminine generosity. Everywhere there are manifestations of respect, gratitude and love: they have placed the woman upon the altar, and have exempted "the Mother of God" not only from all sin, but even from original sin. Mariolatry dominates Christianity, and this after the sons of Loyola.

Very well; this is for the world, for the outside, for policy, for domination; because the master of the woman is the master of the man. But listen how they speak when they are together, far from the mystic ears of the zealots and banner-bearers. They take for themselves the harsh words of the ecclesiastic: "From the cloak comes the scurf; through the woman, the evil to man." (page 306). "Bear this truth well in mind," says Gury, "better feel the evil will of a man, than the good will of a woman" (page 368). In all their dissertations, their deep scorn for the daughter of Eve, the first corrupter, is often manifested under the most vulgar form. I could show hundreds of examples that the reader will meet along the way: let me quote only one — very curious in many points of view. The casuist asks himself, if it is necessary to baptize the children born of a beast and a human being. *Yes*, he answers, if it is a question of a man with a beast; *No*, if it is of a woman and a beast; for in the first case only the child may be considered as a descendant of Adam! (page 483).

So the woman is nothing to the Jesuit, but a kind of ground where the human plant germinates: she belongs to mankind only as a feeding receptacle. Do not ask the casuist, then, to understand anything about the noble sentiments which are the honor of humanity. He knows not what is love; he knows only fornication. He pollutes, with his unclean reveries, all that is most holy, most pure in the world. It is n t o: ly the nuptial bed,

the mysteries of which he scrutinizes with an insatiable lubricity, tormented by a quivering jealousy; he surveys obliquely the chaste conversation of a married couple; the kiss of the sister and brother, father and daughter, mother and little child (page 144); he blights them with his impure suspicion, and also the first quivering of the awakening soul, and the games of childhood, that he hates and calumniates (Page 144). Over this joy, this tenderness, these exquisite graces, we see his viscous trace, like the slime of the snail on the most brilliant flowers.

If he does not know what is love, nor even decency,* no more does he know what is delicacy, generosity, devotedness,† friendship, personal dignity, civic duty, love of country: he ignores so thoroughly these noble things, that he does not know even their name.

You will not find a single one of these words in Gury's volumes. Everything that makes the heart of humanity palpitate, leaves him cool. Do not speak to him of progress, of fraternity, of science, of liberty, of hope; he understands not: he rehearses, in his obscure corner, erroneous consciences, secret compensations, mental restrictions, shameful sins; and with all that, he tries to compose I know not what electuary, in order to stupify and enslave humanity.

For he degrades everything he touches. Suppressing conscience, delivering free-will into the hands of a director, practising deceit — even towards the confessor, who by him is suspected of being tinged with secularism — a means for governing the souls of men, narrowing the horizons, cutting the wings, eternizing twilight around thought and conscience, worse than the night, because all becomes doubtful and takes a fantastic aspect: see what he has done with all those he has set his hand on! I say nothing of the

* See the incredible thesis defended by the Jesuit, that for a girl to abandon herself to others, and have children by them, is not to wrong her affianced husband. (Page 404).

† Neither for his country, which is never mentioned among Jesuits, they having no country of their own; neither for his fellow-men, for no one is obliged to devote himself to others; nor even for a sick husband, whose abandonment is excused, ordered even, in case of danger. (Page 529).

French clergy, whose actual members would take in bad part the instituting of a contrast between themselves and their predecessors. But the French nobility, so bright, so proud, so generous, in spite of their levity, regard it, though distasteful, as without power, barbed not with iron, as of old, but with scapularies and blessed nick-nacks. As for the *bourgeoisie*, with its strong and wise spirit, loving work, progress and liberty; see it, powerless, affrighted, the victim of reactions. And they were going to seize the magistracy; they were stretching their hands over the army; those two safeguards of a nation! Ah! it was time, truly, to open our eyes; for, more skillful than Simon, the cursed magician, they were selling for money, not only the holy things, but also material properties, giving in exchange a few pious tomfooleries!

Happily, among those they brutify, they themselves may be reckoned in the first line. During three centuries, it has been often remarked, they have not produced one man of the first, nor even of the second rank; but they do not seem to perceive it. To Richelieu they oppose, impudently, Bellarmin, Suarez to Pascal, Rapin to Corneille, and Nonotte to Voltaire.

Ah! it is not with impunity that one submits one's heart and mind to such a discipline! In reading the Jesuits, I have often evoked before my mind the image of what would be a complete specimen of their intellectual and moral fabrication. We can almost see him, while I write, stealing on over there, discreetly, in the shadows of the wall. It is not that he always puts on the mask of humility given to him in the comedy: often, he is loud in talk, and of arrogant bearing. But you will recognize him in this, you can never see his eyes: the Constitution of his masters have taught him "to look lower than the one to whom he speaks." His secret thought will escape you, and his close-shut lips will not betray him. But such as he is, young or old, if he is well impregnated with his authors, with Gury only, be on your guard, all of you!

Trust him not, O young maiden! do not say that thou art without fear, because he is betrothed to thee a half sacrament. If thy fortune disappears, or if his increases, he will abandon thee without remorse, with authority from his director (pages 373, 404); it

is his right to do so, if between thee and him there is a notable difference of situation (page 400), and that whatever may have been his previous protestations (page 463). Be on your guard; because, if warmed up by his immoral reading, he incites thee to evil-doing, even after a solemn promise of marriage, he may abandon thee with thy child (pages 203, 267, 417). Trust him not, even if he marries thee; for he can, by the simplest of processes, sever the bond two months after marriage, if he declares its requirements not to have been fulfilled (page 376), and leave thee mercilessly, and dishonored. Trust him not; because if, in pronouncing the sacramental words, he has had the intention not to contract marriage, the act will be void: mind it (pages 407, 408). Trust him not; because he will not trust thee, knowing that, if thou art a pupil of the same masters, thou canst, without remorse, and persuaded that thou dost him "no wrong," abandon thyself to others before thy marriage, and hide from him the existence of children born of thee (pages 375, 405).

Trust him not, ye his wife! if some contagious sickness is upon thee; for his moral law does not oblige him to take care of thee (page 468). Trust him not, as he will not trust thee; because thou hast the right to abandon him in the same case; and besides, the casuist authorizes thee to borrow from his purse recklessly (pages 178, 215).

Trust him not, ye, his father! for if he dares not, in this 19th century, denounce thee to the criminal judge when thou becomest a heretic or an exile, he will be authorized to torment thy conscience at the supreme hour (page 129); for, in order to hide in some convent unknown to thee, or in spite of thee (page 130), he will abandon thee, old and miserable, persuaded that his act is agreeable to God (page 319). Trust him not; because, if he can no more rejoice in the possession of his inheritance, after having killed thee (page 100), it will be at least allowable to "rejoice in the inheritance that his murder will have procured him" (page 100). Look out for him; for if on thy death-bed thou entrust him with a gift for a friend, he has the right to disobey thy last will (page 253).

Trust him not, ye, his child! for he is permitted to wish

for thy death, either in view of thy eternal happiness, in view of diminishing the cares of his family, or of delivering thee from the risks of a sinful life (page 109).

Trust him not, ye, his brother! because he may, calumniating thee at the death-bed of thy father, deprive thee of thy legitimate inheritance, provided he does not do it through hate for thee (page 227); because he may leave in misery thee and thy family, without remorse, and carry his fortune to a neighboring convent (page 319); because he will be authorized to make up skillfully from the paternal inheritance for what he may consider an injustice committed against him (page 208).

Trust him not, you, his friends! because he is authorized to betray your secrets, even the most intimate, when he judges that so to act is in the interest either of the Church, or of a third person (page 407); trust not a letter into his hands; because he will always find some good reason to open it without sin (pages 164, 169); and if your secret is a bad action, remember that he can divulge it to any one who is interested in knowing it (page 161). Do not lend him any books; because, if he deems them bad from his point of view, he is authorized not to give them back, unless he is threatened with a good thrashing (page 106).

Trust him not, all of you! who have with him business intercourse; because, in case of a doubtful transaction, he can interpret it either in one sense or the other, with all safety of conscience, according to his interests (pages 69, 76). For instance, if he surrenders his goods, he may secretly keep part for himself and family (page 251), and even dissimulate his indebtedness (page 240); yea, he may even invent ingenious secret compensations, grazing the swindle (page 219). Because, if you make a will, he will always find the means to have the benefit of it without executing the clauses of it (pages 268, 280); and he will know, without any heart-anguish, how to dissimulate the errors of form (page 91), and even to set right the material ambiguity (pages 277, 304); if you refuse, be careful to declare that he owes you money; without that, he will find a reason not to give it back to your heir (page 276). Because, if you lend him your horse, and he should be stolen from him, he can refuse to pay you (page 283)

Because, if you convey any money to him, he will use it in trade, and keep the benefit for himself (page 284.) Because he is persuaded that he does no injustice in combining with others to hinder your auction-sale (pages 262, 287.) Because he has a thousand ways to dispense himself from paying back what he owes you (page 192.) Because,— and this is worth a poem!— he can wish you a temporal injury, and rejoice at it, with a good end in view! (page 104.)

Do not bet with him; because he is full of resources to make dishonest bets without sinning (page 297.) Do not play with him; because he will conduct himself as an infamous Greek, with all safety of conscience (pages 297, 298.)

Do not believe, under the thought that he is pious, in his promises, nor in his oath, when he sells something to you: those are little peccadillos permitted to merchants (page 261.)

Do not take him as a servant; because he knows thoroughly the theory of little thefts, thefts of article of food, with the conditions of restitution (page 184); and if he judges that you do not pay him enough, or make him work too much, he will find a way to establish the just equilibrum (pages 188, 218.)

Look out for him, clerks of the toll-office, clerks of custom duty, whoever you may be! because he does not admit the legitimacy of your tax, and he will avoid it by any means possible: do not interrogate him, he will lie, under oath, if that is necessary: he is authorized (pages 91, 205, 219); and watch him well, if he is a notary, because he will help, in conscience, to defraud the tax-gather (pages 244, 317.)

Trust him not, members of the council of revision! because he is held to no restitution, if he has somebody ready to take his place (page 206.) Look out for him colonel! he will desert legitimately, if he does not find in the regiment facilities for confessing (page 205.)

Beware of him, judge! when he appears before you as plaintiff, accused, or witness. In vain you compel him to lift up his hand and give his oath before Christ, his God. Almost in all circumstances he will find means to escape you (pages 157, 164, 165, 168, 272, 303, 316, etc.); and if you condemn him, he can, if he deems

his conscience free, compensate himself secretly, to your condemnation.

Beware of him, all of you, and avoid him as the plague! neither your goods, nor your life, nor your honor are in safety with him.

Because, if he advises and induces a thief to plunder your house, he owes you nothing (pages 194, 198, 233); because if he is a judge and renders against you, for complicity with his colleagues, an unjust sentence bought with a bribe, he owes you nothing (page 234); because, if his children or his servants have destroyed some of your property, he owes you nothing (page 235); because, if he sees a thief take away your goods, and he receives money as a bribe for his silence, he owes you nothing (pages 237, 249); because, if he has set fire to your house, wanting an occasion to steal, he owes you nothing (page 196); because, if he has killed your cow, in firing wilfully at your donkey, he owes you nothing (pages 56, 196, 247); because, if he has burned your house, wanting to burn your neighbor's, he owes you nothing (pages 196, 228, 233); because, if he is the thief and you are accused and condemned for his theft, he owes you nothing; even should he have committed that theft in order to have you suspected of it (pages 195, 216); because, if you are the creditor of a man whom he has assassinated, he owes you nothing (page 203); because, if you are the wife or the child of a man murdered by him, and if that man was leading a bad life (page 242), or even was soon to die (page 203), he owes you nothing; because he in no case owes you anything, if in killing your father he believed he was killing another man (page 228); neither if, having voluntarily murdered your father, he deems that you are able to provide for yourself (page 203).

Because he can defame you freely, if he is skillful and has profited well by his lessons (pages 161, 168); and even when the defamation is without excuse and compels damages, he can avoid paying them, if he deems the conservation of his good reputation "useful to religion" (page 162); because he can seduce a young girl, even under promise of marriage, and have children by her, and then abandon her mercilessly, if he can argue a certain inequality of situation either previous or subsequent to the promise

(page 463); and do not speak to him of coming to the help of the poor girl, because he would answer you loftily, that "the loss of virginity can neither be estimated nor indemnified" (pages 204, 243); because, if you take in his house some poisoned nourishment destined for another, he is not bound to warn you, and besides, after your death he will owe nothing to anybody (page 223).

Run away from him; because he has at his disposal "the largely mental restrictions and ambiguous words" (page 156), which allow him, in fact, to lie every time it is for his interest to do so.

Run away from him; because the doctrine of probabilism allows him always to find out a grave doctor whose opinion will be sufficient to legitimatize his action, and will authorize him to act according to his own welfare.

Avoid him; because, once his opinion is grounded, he can violate with safety of conscience all civil laws, and if condemned by the judge, can extensively and quietly use secret reparation (page 188); it is on this point that it is necessary to insist. In virtue of the doctrine of intention, he comes to substitute his own authority for all other. The laws exist no more for him; neither the civil law nor the sacred ties of the family; neither the laws of honor nor anything constituting that cement which binds together the elements of society. He will do such a thing if he deems it good, according to his point of view; for, having on his side a renowned doctor, he has a right to find it good. In all cases, having performed the act according to a conscience invincibly erroneous, as he has not committed any theological fault, he is held to no reparation whatever; and if the civil judge dares to order one, he will compensate himself accordingly.

Such would be, in the maximum of development, the best pupil of Jesuitical doctrines. Fortunately, they have never, I believe, formed one so complete. Honesty, which is in the depth of human nature, takes the upper hand in the pupil, as well as in the teacher; and this above all in France, the abode of generosity. It is without doubt for this reason, that, for three centuries, not a single

Frenchman has been impregnated thoroughly enough with the Jesuitical spirit to deserve the rank of General.

But is not such teaching, even mitigated by common sense and native honor, a true social peril? Who can say how many struggling generations would pass away, before all the noble qualities which yet exist would be blighted and vanquished for ever? As for me, I cannot think of it without shivering. May the reading of the present book communicate to all my sincere and profound terror! May liberals, the most compromised to-day by a generous logic, understand that principles are not made for the sake of those who act in opposition to principles, as the freedom of exchange is not violated when pestiferous bales are seized in our ports!

ANALYSIS

—OF THE—

Works of Father Gury, S. J.,

Professor of Moral Theology in the College Romain.

A.—COMPENDIUM OF MORAL THEOLOGY.

The art of arts is the government of souls.
(*S. Gregory.*)

B.—CASES OF CONSCIENCE.

Long is the way through precepts; brief and efficacious through examples.
(*Seneca.*)

MORAL THEOLOGY.

CASES OF CONSCIENCE.

BOOK I.

TREATISE ON HUMAN ACTIONS.

Chapter I.

OF THE NOTIONS OF HUMAN ACTS.

1. *Definition.* The act, in general, is the determination of power, or the faculty to act, consisting in exercise, or even the use of this acting faculty. Power, in circumstances in which it may become action, is ordinarily called first act, and its determination, second act.

But the human act proceeds from the deliberate will of man, or from his free will, turned towards good or evil. The human is then a moral act. . . .

The human act differs from the act produced in man without deliberation, such as the involuntary acts, or spontaneous movements (*primo-primi*), or the heedless acts of man, in sleep, delirium, folly, drunkenness, when he is not under the control of his reason.

2. — *Division.* The human acts are multiple:

1. Spontaneous or commanded. . . .
2. Internal or external. . . .
3. Good, bad, or indifferent.
4. Natural or supernatural. . . .
5. Valid or void. . . .

CHAPTER II.

Principles of the Acts.

3. They are: knowledge, will, and liberty.

They constitute those acts, and are necessary for each one of them, as it results from the definition of the human act. . . .

ART. I. — Of the voluntary act.

Section 1. — Of the voluntary act in general.

4. The voluntary act proceeds from the will with the intellectual knowledge of the end. The reason of that definition results from what has just been said, or from the necessity of a previous knowledge, so that the will could be induced to act.

It differs: first, from the wilful act which is only the object of the will, and as such, does not proceed from nor depend on it; so the rain falling on a barren land will be called wilful by the farmer, but not voluntary; second, from the spontaneous act, which is produced by a knowledge purely material and sensual, and so imperfect, such as one may recognize in beasts.

5. — There are several wills:

1. Perfect or imperfect.

2. Simply voluntary, or dependent on something (*secundum quid*). . . . Thus to throw goods into the sea when one is threatened with a wreck, is said to be an act simply voluntary, though involuntary in relation to something, on account of the reluctance without efficiency of the will.

3. Direct or indirect. . . .

4. Positive or negative. . . .

5. Formal or tacit. . . .

6. Actual, virtual, habitual and interpretative. . . .

6. — In the same act, there may be a direct will in itself, indirect in its cause, and involuntary.

Example: Titius wanting to kill Caius, his enemy, attacks him, risking to wound his comrade who is with him; but the bullet, besides the two men, strikes also Simpronius, that Titius could not see, not knowing him to be there. Caius is struck by the direct

will of Titius, his comrade by the indirect will, and Sympronius outside of any will.

SECTION 2.—Of the voluntary act in particular.

There is no particular difficulty in the other wills, we shall speak only of the indirect will.

7.—That will, as it has been said, has not a direct aim in itself, but results from something else directly thought of, as the effect from the cause. Who wants the cause, wants the effect which follows it, if that effect has been foreseen. . . .

There are several sorts of causes:

1. Physical or moral. . . .
2. Immediate or mediate. . . .
3. Near or far off. . . .
4. Cause by itself (*per se*) or by accident (*per accidens*). . . .

The first one tends, by its nature, to produce the effect. Thus, drinking too much is the cause in itself of drunkenness. The second, although not being destined in its nature to produce the effect, may, however, bring it out through circumstances. Thus homicide may result from drunkenness.

8.—A bad effect proceeding from indirect will, that is to say, from a cause indirectly willed, must not always be imputed as a fault to its author.

In order that there should be fault, these conditions are necessary: That the author has forseen the effect, at least confusedly; that he may not have been able to produce the cause . . . ; that he has been detained from producing the cause, or to have suppressed it, if it already existed. . . .

9.—It is permitted to produce a cause good or indifferent, from which follows immediately a double effect, a good one and a bad one, if the cause is serious and the intention honest, not directed towards the bad effect.*

* Q. "Are we always obliged to abstain from an act from which we foresee some bad effect caused by the malice of a third person?

A. No, when we have a legitimate motive to do that act, and when we have a right to the advantages it must bring out, one is not obliged to sacrifice the good that will result from it." (*Petit Catechisme de Marotte.*)

Because if this was not allowed, the author would sin, either by the intention of a bad effect, by the production of the cause, or by the prevision of the bad effect. Nothing of this can be sustained. . . .

10.—Examples: . . .

A young girl sins gravely if she miscarries in order to avoid dishonor. The reason of it is, that the miscarriage is directly a means to liberate herself from infamy, and that she seeks good through evil.*

Article II. Of free will.

11.—Free will is what proceeds from the will acting upon itself, with power not to act. Then, liberty is the faculty to act or not, or of choosing one thing rather than another. So, all that is free is voluntary, but the converse is not true.

Although free will and will differ between themselves, nevertheless, in the acts by which man travels upon this earth, tending to his end, they are never separated in reality. . . .

There are several kinds of liberty:

1. Liberty without constraint, or of indifference, or of choice.
2. Liberty without any outweighing power, exempted from any exterior violence.
3. Liberty of contradiction, faculty to act contrariwise.
4. Liberty of contrariety, by which one can choose either one thing or its opposite.
5. Liberty of specification, faculty to employ one's self in different things.

* This is indeed what decided Innocent XI. to condemn the following proposition, on the 2d of March, 1679: "It is permitted to provoke abortion before the animation of the fœtus, for fear that the girl should be exposed to death or infamy." (Prop. 34).

But, if we may be allowed to believe they have to make apology to-day, the Jesuits did not always avow themselves vanquished by the decree of the Papacy. Jean Marin wrote, in 1720: "One could perhaps admit the doctrine of the condemned proposition, to avoid infamy, if no other means is to be found to hide the crime and avoid the infamy. And perhaps he would not be in the case of the condemned proposition who would say that abortion is permitted, not to avoid his own infamy, but that of a religious community." (Page 423).

ARTICLE III.

Obstacles to free will and to will.

There are four of them: Ignorance, concupiscence, fear and violence.

SECTION I. — Of ignorance.

13. — Generally speaking, ignorance is the want of knowledge.

We distinguish: 1st, The ignorance positive or negative, from what we ought to know or what we ought not. . . .

2. Of right or of fact. . . .

3. Superable or insuperable, that is to say, that one can overcome by one's efforts, or not; physically, by any means, morally, by any moral attention. . . .

4. Antecedent or consequent. . . .

We distinguish three superable ignorances: Firstly, Simply such, when in order to conquer it we bring some attention, but not enough; Secondly, Vulgar, when no effort, or scarcely any, is made to discover the truth; Thirdly Affected, when one seeks, directly and positively, to ignore, either to sin more freely, or in order to have an excuse for sinning.

14. — Insuperable ignorance effaces the will.* Then no act proceeding from it can be imputed to its author. . . .

Superable ignorance does not take away the will . . . but diminishes it. . . .

The vulgar ignorance and the affected ignorance diminish the will a good deal less, and consequently the sin. . . .

EXAMPLES:

A husband sinning with a woman that he ignores in an insuperable manner, as the sister of his wife, is culpable of adultery, but not of incest.

Children who have made an illcit use of their own bodies, without remorse of conscience, have not sinned in principle, though having attained the age of reason. . . .

* Insuperable ignorance, that is to say, the one we are not able to overcome by ordinary means, takes away the will and excuses the sin. (*Marotte Petit Catechisme*).

SECTION 2. — Of concupiscence.

15. — Concupiscence is the movement of the sensual appetite which incites the will to a sensual pleasure.

There are two of them; the one antecedent which precedes the voluntary act, the other consequent, which follows it. . . .

Antecedent concupiscence, far from effacing the will, rather augments it, if we bear in mind the inclination of the will; but it diminishes it, and even takes it away altogether, if we understand the judgment of reason and the deliberation of will. . . .

SECTION 3. — Of fear.

17. — Fear is the agitation of the mind in presence of actual or future danger, for one's self or relations.

Fear is subdivided thus:

1. Grievous or light. . . . It may be grievous, absolutely or relatively. . . .

2. Intrinsical or extrinsical. . . .

3. Just or unjust. . . .

18. — The act proceeding from fear, though grievous, is simply and absolutely voluntary and free.

SECTION 4.—Of violence.

20.—Violence is a constraint brought by an exterior and free force, in spite of the will. . . .

Violence is absolute and relative. . . .

EXAMPLES:

21.— 1. A woman who resists by all possible means what is offered her does not sin, although the victim of a rape; because no one sins in spite of himself.

2. Women sin grievously in submitting to violence, without resistance, through timidity or fear, for instance, in order not to offend the aggressor, even in setting aside all danger of consent; because although they do not consent to the sensual pleasure, however, not resisting as they might, they agree, which is equivalent, to their own ravishment, and co-operate in the crime of the man.— But a woman overcome by force, who does not cry for help, for fear of death, does she sin? There is controversy.

According to the probable opinion, one may say no, putting aside the danger of consent. And so, the woman is not obliged to cry if she runs the danger of suffering some notable injury, either to lose her reputation, or to be called a prude; besides, if she has resisted as much as she could, she is not held to fight against violence, to expose herself to so great an injury. This is the opinion of St. Liguori. However, as there is almost always the danger of consent, in practice, the contrary is advocated.* . . .

CHAPTER III.

Morality of Human Acts.

Essence of Morality. Its Sources.

ART. 1. — Of the essence of morality.

22. — The essence of morals consists in the relation of human acts to the eternal law, which is the divine reason, otherwise, the will of God.† . . .

ART. 2. — Of its sources.

They are three: The object, the circumstances, the end.

Section I. — Of the object.

26. — The object is the immediate aim of the moral act, but to which converges most nearly and naturally the will of the acting agent.

It is good, bad, or indifferent. . . .

Section II. — Of circumstances.

* It is here that is found, in the ancient casuist, the case of the chaste Suzanne, to the exaggerated rigorism of whom they do not spare criticism: "Suzanne," says Jacques Tirin, "might have avoided her troubles if, fearing infamy and death, she had let the adulterers satisfy their lewdness, without consent or co-operation, permitting only, and remaining neutral. In fact, to preserve her chastity, she was not obliged to call for help, and in so doing defame her reputation and even endanger her own life; for the integrity of the body is of a less consequence than reputation or life." (page 291.) It is also the opinion of Cornelius, Dicastille, etc., etc.

† All this passage may be summed up in these bold words of Jean Gerson: "God does not will certain actions because they are good; but they are good because He wills them. Just the same as others are bad because He forbids them.

27. — Circumstances are the accidental determination of the act, without which it might exist in its substance, but nevertheless injure in some way, its morality. Circumstances are not the object of the act, because will reaches them only in the second degree. . . .

SECTION III. — Of the end.

28. — The end, in general, is the reason for acting. There are two: The end of the act being the crowning of the act, and the end of the agent, that is to say, that on which the agent directs his intention.

Appendix.

ON THE MERITS OF THE ACTS.

33. — A meritorious act is a good work, worthy, through grace, of reward or retribution. Acts are of two kinds: The meritorious act *de condigno*, to which a reward is due in justice, that is to say, by the promise of God; and the act *de congruo*, which has a right to a reward, not by the justice of God, but by a certain agreement, and through God's generosity. . . .

34. — What is necessary in order that an act should be meritorious *de condigno?*

It should be: 1st, Free . . . ; 2nd, honest . . . ; 3d, produced by grace . . . ; 4th, the agent must be in a state of grace. . . .

Cases of Conscience on Human Acts.

Case I.

Of Will.

Arnulfe, an honest man but imperious, meets his enemy; harassed by him with insults and blows, burning with a desire to kill him, he seizes a dagger and springs upon him. But he masters his anger and runs away. Then, becoming calmer, and fearing he has committed an attempt against life, throws himself at the feet of his confessor and avows his fault.

In another instance, knowing that when in a state of drunkenness he is of a quarrelsome disposition, he takes good care not to drink to excess. But it happens that, excited by his friends to drink more than usual, he gets drunk before thinking of his danger, and becoming furious, he quarrels with the others. Coming to himself, he hurries to do penance and goes to his confessor.

Ques. Has Arnulfe sinned in both cases?

Ans. Arnulfe does not seem to have sinned in any case, at least grievously; because he had not a knowledge full and perfect of evil, and there was no premeditation, as we can see in the perusal of cases of conscience. Besides, Arnulfe, being subject to anger in the first case, we may think that he has followed his first impulse (*ex motu, primo-primo egisse*). As for the second case, he could not sin if he did not think of all the perils of drunkenness.

Case II.

Of Will.

1.— Elpidius, a drunkard and fighter, who grows furious in a state of drunkenness, quarrels with Titius, and decides to revenge himself on him; however, he puts off his project to another time. Then, he repairs to a tavern in the neighborhood to drown his

anger; but coming out during the night in a state of drunkenness, he meets Titius, and beats him fearfully, so that he (Titius) is forced for many weeks to leave his work, and sustains great loss.

2.—Blazius, in order to cause injury to Caius, takes his gun, and shoots at the donkey of the latter. But alas! a double misfortune happens. He misses the donkey, which escapes safe and sound, and kills Titius' cow, resting quietly behind a hedge, and which he had not seen.

Ques. 1. Must the injury caused to Titius during the drunkenness of Elpidius, be imputed to the latter, and must he be held for damages?

2. Quid, in the case in which, not being in the habit of drinking to excess, he would have done it through inadvertence?

3. Can Blazius be held to a restitution for the donkey that he missed, or for the cow which he killed?

Ans. Question 1.—Yes, the reason of it is, that the injury is plainly voluntary, and foreseen in its cause, at least vaguely (*in confuso*). Elpidius wanted, in fact, to wrong Titius; he drank in danger of getting drunk, being, by nature, a drunkard. Besides, he must have foreseen, impliedly at least, that he would cause some wrong in such a state, being aware that he becomes furious, and that he may injure some one. Elpidius can not then be absolved from a grievous sin against justice, nor dispensed from the obligation to compensate the injury.

Ans. Question 2.—In this hypothesis, the evil committed by Elpidius cannot be imputed to him; because he is not voluntarily in the act (*in actu*), the reason missing, neither in the cause (*in causa*) the evil not having been foreseen.

Ans. Question 3.—Blazius is bound to no restitution. Certainly not for the donkey, which ran away safe and sound; neither for the cow, having not foreseen that misfortune, nor supposed it. Then, in conscience,* and before the sentence of the judge, he can not be constrained to any reparation for the injury. Quid, if the donkey and cow had belonged to the same Caius? I answer, in the widest acceptation of principles, that, not even in that case,

* "In conscience, one is exempted from restitution if the wrong, even grievous, has been done without theological faults." (Frachala 1759).

should Blazius be held to repair the injury, having done it involuntarily.

Case IV.

Of the Indirect Will.

Richard, an inn-keeper, happy in having a large patronage, furnishes abundantly wine to the drinkers, incited by the love of lucre, and also by the desire to prevent blasphemous talk, though foreseeing that many of them will get drunk; in his conscience, he is not sinning. He harbors, even cheerfully, men who hold impious or obscene conversations, and he does not reproach them for it, because, says he, he is not responsible for their conduct.

Ques. 1. Does Richard sin gravely in furnishing wine to people who will get drunk, without any better reason than his love for gain?

Ques. 2. Does he sin grievously in trying in such a manner to prevent the drinkers from blaspheming?

Ans. Question 1.—1st, *Yes*, in certain particular cases; for instance, if it is a question of a toper almost drunk, who asks for more wine. The reason for it is, that in this precise case, he is only subject to a slight loss, in order to avoid a certain and determined sin.

2d, Generally, in theory, *No;* because the inn-keeper is not held to sustain a considerable loss in order to prevent the habitual sin of drunkenness in his clients; charity does not force upon us such a sacrifice.

The love of gain, understood in a vague and general manner, is sufficient for not opposing those sins. They are committed accidentally, and against the intention of the innkeeper; besides, he cannot refuse to serve the drink called for without sustaining considerable loss, because it is hard to find a tavern where a large number of clients do not drink to excess, quarrel, etc., etc. So if the publican refuses what is asked for, his customers will go somewhere else, and he will sustain great loss.

Ans. Question 2.—No; the desire to prevent blasphemies is sufficient to allow drunkenness; because, of two evils we must choose

the least. Now the greatest is blasphemy; for, according to Hieronymus, nothing is more odious than blasphemy.

Case V.

Of the Indirect Will.

Lubanus, to amuse himself, is in the habit of going on horseback. But often, during that exercise, he is subjected to carnal temptations, and even oftentimes to pollutions. Although he deeply regrets these sorrowful occurrences, he fears to soil his conscience, and he asks his confessor if he must no more enjoy that exercise.

Ques. Has Lubanus sinned?

Ans. Let not Lubanus be troubled. Though it is only for amusement, it would be hard for him to renounce it forever. It would be otherwise if it was a question of only one or two particular cases.

Case VI.

Effects of Ignorance.

Adalbert makes this confession: 1st, Wanting to murder my enemy, Titius, I have killed my friend Caius; 2nd, Firing on a deer, I struck my enemy hidden in a bush, and whom I wanted to kill; 3d, Ignoring that I was in the time of fasting, I ate meat; but, through laziness, I had not been to mass on Sunday when the obligations for the week had been announced.

Ques. 1. Was there an ignorance excusing sin, and what was it?

Ques. 2. What must we think of Adalbert?

Ans. Question 1.—1st, Insuperable ignorance excuses from all sin; because it entirely prevents knowledge of evil, and suppresses the will. In presence of that ignorance, the obligation or prohibition of the law cannot be known, and so cannot compel; because "Nothing is willed if not preconceived." 2nd, Insuperable ignorance does not excuse from sin, not suppressing will; and in presence of that ignorance, there is a sufficient and vague knowledge which obliges us to search for the truth.

Ans. Question 2.—In the first case, Adalbert must be excused

from all sin for the homicide committed, if he has not foreseen the death of Caius; for instance, if he took good care to strike any other than Titius. The reason of it is, that this outward act does not constitute an injustice toward Caius, killed involuntarily. So, he cannot be held for any restitution to his heirs. It would be otherwise if he had omitted the precautions that he ought to take, or if he had vaguely foreseen the danger of killing Caius.

In the second case, we must distinguish: either he has taken the necessary precautions to avoid injuring another, or not. If he took them, Adalbert cannot have sinned in the absence of will, even trying to kill his enemy, because, although he wanted to kill him, he was not ready to do it at that particular moment.

In the third case, we must also distinguish: if Adalbert, avoiding to assist at mass on Sunday, has had a grave doubt on the obligation that would be imposed for the week, and if he has neglected to inform himself, or to interrogate prudently others on the subject; because then, his ignorance has been superable, and he has sinned against the commandment of the Church. But if, neither at that moment nor later, he thought of the obligation in question, though he has sinned in not going to mass, he has not sinned in breaking the fast.

Case IX.

Of Fear and Violence.

Bertine, a servant fearing God and having a horror of sin, frequently solicited to do evil by her master, resists him every time. Her confessor exhorts her to avoid the occasion of sin: she asks him, she begs of him, to let her stay in the same house, because her wages are well paid, and she could only with difficulty find another situation. The confessor consents to it.

Soon after, her master presses her again to sin with him, and she is ensnared. What will the unfortunate servant want to do? She dares not cry, for fear of losing both her own and her master's reputation. Then, as she begins to cry out, her master, blinded by passion, threatens her with death. But, however, find-

ing herself in her such embarrassment, she remains purely passive, and from the bottom of her heart curses the sin.

Ques. 1. Was Bertine obliged to avoid the occasion of sin, and be constrained by her confessor, and even if he refused her absolution?

Ques. 2. Did she sin grievously in not calling for help for the reasons mentioned by her?

Ques. 3. Did she sin grievously in not defending herself to the last, and in abandoning herself, passively, for fear of death?

Ans. Question 1.—Bertine ought to have been advised to avoid the actual occasion of sin, if she could have found another situation; but, as it was a question only of a probable occasion, she could not be constrained to leave her place.

Ans. Question 2.—There is controversy. According to some, she has grievously sinned in principle; first, in not calling out, unless she is excused for her good intention. Because she had an easy remedy against the danger that her chastity incurred, and her excuses have no weight. There was no risk of losing her reputation; because, only honest women cry out in such circumstances. As for the reputation of her master, he could impute its loss but to his own perversity.

Ans. Question 3.—There is controversy. But according to Lacroix and others, she must be excused for the fear of death; inasmuch as there was, on her part, no co-operation whatever.

Case X.

Of Concupiscence.

Marchand, 1st, reads different novels, foreseeing that he will take pleasure in obscene subjects; 2nd, occasionally, he looks at the nakedness of statues, but resists the temptations caused by the sight; 3rd, he takes pleasure in shameful acts, but does not know for certain if he was sleeping or awake; 4th, obliged by his position as a merchant, to have relations with persons of both sexes, he finds that he takes a great deal more pleasure in the society of women than of men.

Ques. What shall the confessor decide in each one of these cases?

Ans. 1. If he reads for an honest motive he does not sin, provided he resists temptation, because the movements of concupiscence are quite involuntary; and besides, there is a sufficient cause for permitting them. If he reads for curiosity things a little dangerous, he commits a sin, it is true, but venial, always supposing that there was no consent. But if he reads without cause some very obscene books, he sins grievously, at least, on the ground of the danger of giving way to temptation, except however the case where, reading for pure curiosity, in consideration of his old age, cold temperament, or for some other particular reasons, he is not in grave danger of succumbing.

Ans. 2. He sins grievously if the statues are in a state of complete nakedness, and if he looks at them designedly, closely, and for a long time; because, without reason, he exposes himself to shameful temptations, and runs the risk of sinning grievously. It would be different in principle if he sees them in passing by from a distance, or even if the statues are of no artistic merit. This is the opinion of St. Liguori on pictures, which may be applied to statues.

Ans. 3. One may presume that it has happened during sleep; because the acts of a man awake are easy to recognize. Then, in doubt, it must be thought that it happened during sleep.

Ans. 4. He has not sinned, provided he remains honest and resists temptation. No matter if he is attracted more towards women than men; because this tendency does not come from the heart nor from the will, but rather from nature: then, in principle, there is no harm done. But it must be admitted, that such a tendency is disagreeable for a chaste mind, and even dangerous for an imprudent man. It is necessary to advise Marchand to moderate that inclination, and repress it according to his strength.

Case XI.

Of the Object of Morality.

Monigue, inn-keeper, . . . in order to prevent quarrels and

blasphemies, a custom to which her husband is addicted, very often tells white lies; experience has shown her that this is quite necessary to keep peace in the household.

Ques. Must we approve this way of correcting her husband?

Ans. It is never permitted to lie, not even in view of an advantage; for, we *must not do evil in order to benefit by the good that may come out of it.* Now, lying is in very nature an evil, although it may be only a venial sin; but although Monigue must abstain carefully from lying, she is not obliged to tell all the truth to her angered husband. We will explain more fully in treating the eighth precept of the Decalogue.

Case XIV.

Of the Intention of the Agent.

Blondine, vain-glorious, seeing other women of her own condition go very often to confession, communion, masses, etc., receives the same sacraments, and goes very devotedly to mass, in order not to appear less pious than they. Learning that, her Confessor declares that Blondine's confession and communions are sacrilegious, and that the masses heard are useless for her own eternal salvation, because good proceeds from a pure motive, evil from an imperfection, whatever it may be.

Ques. Are Blondine's confessions meritorious? and what do we think of her other actions?

Ans. The Confessor seems rather severe. Why should Blondine's confessions and communions be sacrilegious? The motive of vanity has not been the prime idea; at least, we may suppose so. Now, if this is admitted, there is but a venial sin in each case; but a sacrilege does not result from a venial sin committed in the reception of the Sacrament of Penitence or of the Eucharist, unless such a hypocrisy should be the principal aim of the person. Acts produced by vanity are not always without merit, because that vanity is not the principal motive of the person. We may apply the axiom: "Good is the product of a pure motive," because a motive is pure: 1st, by its object, 2d, by its end, at least partially, 3d, by its circumstances. It would not be good if it had none of these conditions of purity.

Treatise on Conscience.

36. Conscience is the practical voice of reason, or the practical judgment by which we think that we can or may do a thing, because it is good or commendable; or that we must not do it, because it is bad. So it differs from reason, which gives only the general principles.

It is subdivided thus:

1. Conscience is sound or unsound.
2. Conscience is certain or doubtful.
3. Conscience is scrupulous or lax.
4. Conscience is probable or improbable.

CHAPTER I.

Sound and Unsound Conscience.

37. The sound conscience represents the object such as it is in itself; otherwise it is called unsound; and the unsound one is called vincible or invincible, as to whether ignorance or error is culpable or not.

The conscience invincibly unsound which commands, must be obeyed in all cases.*

The invincible conscience which permits, suppresses all sins.†

* Do we not recognize several cases of conscience?
Ans. Yes, we recognize the *true* and the *false* conscience, the *certain* and the *doubtful*, the *probable* and the *improbable*, the *scrupulous* and the *lax*. (*Petit Catechisme de Marotte*).

† This is the origin of the doctrine of philosophical sin, the name of which is hidden by the modern Jesuits, through prudence, but without having renounced, in spite of the numerous condemnations of the Church, any of the principles from which it is deduced. In order to have a complete idea of it, it is necessary to refer to what they wrote before our unhappy epoch of distrust and free investigation. They have never denied those odious doctrines, the trace of which is found in all the acts of their pupils; but they content themselves to-day with making it an

CHAPTER II.

The Certain or Doubtful Conscience.

ART. I. — Of the certain conscience.

39. — The certain conscience judges, without any fear of mistake, whether a thing is good or bad.

There are three sorts of certainties: 1st, Metaphysical . . . ; 2d, Physical . . . ; 3d, Moral . . . ; the latter subdivided into perfect or imperfect. . . .

There are also the direct certainty and the indirect certainty. . . .

The certain conscience is the only rule of morals. . . .

The conscience morally certain, even imperfect, is sufficient. . .

ART II. — Of the doubtful conscience.

40. — This is one which hesitates to pronounce on the honesty of an action. . . . It differs then from the probable opinion and

object of oral teaching. We find it also in some of the *cases of conscience* printed even in our days. Here are citations as odious as they are ludicrous.

Sanchez: "In order that a man should sin mortally, he must consider either that his action is bad, that there is danger from malicious intention, or he must have some doubt or scruple. If nothing of that exists, ignorance, inadvertence, forgetfulness, ought to be acknowledged, as quite natural and invincible." (page 107.)

De Lugo: "St. Paul said to the Corinthians: *If you are adulterers, you shall not possess* the Kingdom of God. . . .

"But if the Corinthians had paid no attention to the offence to God they would have committed a philosophical adultery, but not a theological one, the latter being a mortal sin.

"Homicide becomes so grievous by the prohibition of God, that from a philosophically moral evil, it becomes a mortal sin, if that prohibition is known; because, if it was ignored, and that without any fault, it would have but the philosophical gravity which comes from its nature." (page 109.)

Dicastille: "A theft, in default of deliberation, may be a venial sin. . . . This may happen by the violence of the temptation; above all, when there is such haste that there can be no time to deliberate."

Tambourin: "The one who through inveterate habit swears falsely, without any attention, is generally excused. . . . He may also be excused from confessing it." (page 111.)

Georges de Rhodes: "As there is no sin where there is no attention to the malice of the act, so, there cannot be any mortal sin when one does not perceive the gravity of the malice, or the danger of that gravity.

"For instance, one man kills another, thinking, indeed, that it is an evil, but thinking it only a slight evil: such a man does not sin grievously;

conscience which does not suspend, but gives its assent, though with fear, to the truth of the contrary opinion.

We distinguish several doubts:

1. Positive or negative.
2. Of right or of fact.
3. Speculative or practical. The speculative doubt is subdivided into simple speculative and practical speculative.

41. — The practically doubtful conscience is not to be depended on altogether, and we must follow the safest way. But one may sometimes be satisfied with the speculatively doubtful conscience. . . .

A doubt purely negative, is held to be void. . . .

Ques. What is to be done is case of a perplexing conscience?

Ans. Consult a confessor, if possible.

because it is knowledge alone which applies to the will its malice or its gravity. So malice is imputed in proportion to the knowledge that we have had of it.

"If some one commits an adultery, or a homicide, knowing well, but however, in an imperfect and superficial manner, the malice and the gravity of these actions, that man, however grievous is the act, sins, nevertheless, but lightly. The reason is, that, as the knowledge of malice is necessary for the sin, so, to commit a grave sin we must have a full and clear idea of it, and consider it as such. . . . My opinion is, that there will be only venial sin every time that one will think, in general, of the malice of the act, without thinking that such an act may be mortal." (page 114.)

Platel: "A sin, however contrary to reason it may be, committed by a man who ignores invincibly, or bears not in mind that there is a God, or that God is offended by his sin, is not a mortal sin . . .; it is a philosophical wrong."

Casnedi: "When, to a morally insuperable ignorance of the prohibition and malice of the action, is added an invincible error upon the honesty of the object or precept, the action made in consequence of that ignorance and of that error, is always honest and meritorious, if the other circumstances are to be found there." (page 119.)

Georgelin: "In order to sin, some consideration or attention, even actual, to the moral malice, is necessary. . . . This is true of the venial sin, as of the mortal." (page 120.)

Jesuits of the College of Caen: "There is no law, either natural or positive, which commands us to attribute all and each of our actions to an end naturally good and honest. Even if such a law existed, either positive or natural, it could not be enforced, because it would not be sufficiently promulgated." (114.)

Le Moyne, Professor at the College of Auxerre: "It is true that the natural law teaches that one must not lie; but this same law ordains us

CHAPTER III.

The Scrupulous and Lax Conscience.

ART. I. — The Scrupulous Conscience.

The scrupulous conscience is that which, for a vain and slight motive, doubts the honesty of an action, and fears to sin, where there is no occasion for sin. . . .

I. Causes of scruples.

They are:

1st. The divine permission.— It is God who permits false apprehensions, by taking the light from us.

2nd. The operation of the devil. Because the devil is very

to follow conscience, which by an insuperable ignorance can teach that one may lie." (page 129).

Mathieu Stoz: "To commit any sin, venial or even mortal, it is not sufficient to have a habitual knowledge of the malice of the action; that is to say, it does not suffice to have had it yesterday, or a few days previous; but it is necessary that the advertence should be actual, and at the very time when the will commits the bad action, or begins to commit it. Moreover, one cannot say that a man sins at the *moment* when he has not an actual knowledge of the moral malice of the action, although he had it a little while before.

Then the actual and invincible inadvertence of the malice of the object excuses the sin." (page 138.)

Busembaum and Lacroix: "Although we all know that, by the natural law, lying is ordinarily forbidden, and also, that it is ordinarily permitted not to kill anybody upon one's own authority; notwithstanding, such circumstances may be found in which we think, invincibly, that these things are permitted at the present moment.

This is the opinion of the saintly and learned Cassien. . . . And others think that official lying is sometimes permissible. . . . Vasquez relates, that a vulgar man thought that he could act honestly and piously by turning over a sick man and occasioning a prompt death, and thus deliver him from considerable pain. . . .

Sarasa, in his book, "*Art de se rejouir toujours*," relates, that another man, through zeal for the glory of God, and for the salvation of souls, baptized the children of the Moors brought to him by their parents, and killed them immediately after; to make sure of their salvation, and for fear that, carried back to their parents, they would not be taught the faith of the church." (page 143.)

At last, the *Petit Catechisme de Marotte* sets this beautiful doctrine before the eyes of little children, in the following terms:

"Ques. Is it permitted to follow a conscience invincibly erroneous?

"Ans. Yes, it is permitted to act according to the inspiration of a false conscience, when the error comes from an insuperable ignorance; because that error, not being voluntary, cannot be removed, and the acting agent does not wish to commit, and does not believe that he is committing, evil."

skilful in discovering scruples, urging the course of the blood, changing humors, and calling forth vain apparitions.

3. The melancholy and phlegmatic complexion. . . .

4. The weakness of the judgment. . . .

5. Too great uneasiness. . . .

6. Relations with scrupulous people. . . .

II. Consciences inclined to be scrupulous.

III. Inconvenience of scruples.

IV. Remedies against scruples.

V. Rules for scrupulous people.

48.—They must obey absolutely and blindly their confessor, and show in everything the greatest humility and confidence. . . .

Art. II.—The Lax Conscience.

49.—This is the one which, for too slight a motive, believes that to be permitted which is not so.

There are three kinds:

The conscience *simply lax*. . . . *hardened*. . . . *pharisaical*. . . .

CHAPTER IV.

The Probable and Improbable Conscience.

We must treat: 1st, of the nature; 2nd, of the efficacy; 3rd, of the probability.

Art. I.—The Nature of Probability.

50.—Opinion, in general, is the assent to either of two ideas, or the adhesion to either of two contrary opinions, through fear that the other may be the true one.

Probable opinion is based on a grave motive, although one fears the truth of the contrary opinion. *Improbable* opinion is a judgment that is not based on a solid reason.

Probability is subdivided thus:

1. *Intrinsic* or *extrinsic*, according as it is based either on reasons drawn from the thing itself, or from authority.

2. *Of right* or *of fact*, based on the existence of a right and of its application, or on some fact.

3. *Speculative* or *practical*, as we consider the thing in an abstract manner, or in relation to the action.

4. *Absolute* or *relative*, whether it appears such to everybody, or only to one or a small number.

5. *Solitary* or *comparative*, according as it appears such considered in itself, or compared with the contrary opinion.

6. *Certain*, *doubtful* or *slight*, according to the motives on which it is based.

We distinguish three kinds of comparative probabilities:

1. *Major*, 2. *minor*, 3. *equal.*

Any proposition may be *more*, *less*, or *equally as probable* as the contrary proposition, according to motives more, less, or as steadfast on which it is based. But the more probable admits different degrees; for it is less or notably more probable than those of the contrary opinion. It is called *very probable*, if it is caused by a very serious motive. It is that, said St. Liguori, which is based on a very serious foundation. The contrary opinion is called probable in a slight or doubtful manner.

Moreover, an opinion is *sure*, if it simply favors the law, *more sure* if it favors it more, *less sure* if it favors it less. Then, the more probable opinion is not always more sure, because a greater probability may favor liberty.

Different Systems on Probability.

1. *Absolute tutorism* or *rigorousness*, according to which one must always follow the surest opinion; that is to say, the one which favors the law. (*legi favens*); unless there is certainty in favor of liberty. This opinion has been disapproved by the church.

2. *Mitigated Tutorism*, according to which it is only permitted to follow the most probable opinion, which favors liberty.

3. *Probabiliorism*, by which one must follow the opinion favoring the law, unless the contrary opinion be more probable.

4. *Æquiprobabilism*, according to which it is not permitted to

follow the less sure opinion, unless it should be as probable, or nearly so, as the contrary opinion.

5. *Probabilism*, according to which one may follow the less sure and less probable opinion, provided that its probability is true and solid.

6. *Laxism*, according to which it is always permitted to follow the slightly probable opinion; but this system has been condemned, as we shall see later.

Theologians, according to their opinion on probability, have received different names: rigorists, tutorists, mitigatists, etc. . . .

1. Probability, by its nature, excludes necessary moral certainty; because it is in this only that it may differ from it.

2. Any probability, however great it may be, in the presence of the contrary opinion having become certain, is destroyed.

3. One must surely accept as probable an opinion considered as such by most theologians, or even looked upon as absolutely true by five or six theologians, distinguished for their honesty, judgment and science; unless there should be a sure reason against that opinion.

4. An honest and learned man regards as surely probable an opinion that he has carefully examined, and which he believes to be true, or surely probable, for serious motives, when he judges it aside from all irregular passion.

5. As to the intrinsic probability of right, only theologians, very wise and well versed in morals, can judge; because they alone know that nothing certain can be brought against their decision.

6. A man indifferently learned may judge of the extrinsic probability of an opinion, if, knowing the question thoroughly, he sees it affirmed by superior authority, that is to say, approved by theologians.

7. A single authority above all exception, bringing a reason that the others have not examined or sufficiently explained, and itself explaining well the reasons of others, renders its opinion surely probable, though opposed to the common opinion.

8. An ignorant man, hearing one whom he looks upon as honest, prudent and learned, say to another, that an opinion is surely

probable, may consider it as such; because he cannot judge for himself, and he has no other means of knowing the intrinsic probability.

ART. II.— EFFICACY OF PROBABILITY TO FORM CONSCIENCE.

55. — This efficacy consists in the strength of probability to make the voice of conscience practically certain. . . .

FIRST THESIS.

56. — It is not permitted to follow the probable, nor the more probable opinion, leaving aside the more sure opinion, every time that there is an absolute obligation to obtain, with efficiency, a determined end, that could be compromised by the use of means probably ill appropriate to that end. Then, we must follow the more sure opinion. . . .

SECOND THESIS.

58. It is not permitted to follow an opinion slightly probable, leaving aside the more sure one. . . .

THIRD THESIS.

59. It is permitted to follow the most probable, and even the more probable opinion, leaving aside the more sure opinion, if it is a question only of the honesty of the action. . . .

FOURTH THESIS.

60. It is permitted to follow an opinion truly and strongly probable, leaving aside the more sure opinion, equally and even more probable, if it is only a question of what is permitted or forbidden.

This proposition is demonstrated by three kinds of arguments drawn from: 1st, reason; 2d, authority; 3d, consequences of the contrary opinion.

This is the demonstration by reason: there is no obligation to obey a law the existence of which is not certain; a law has no certain existence if a true and strong probability exists against it. Then, there is no obligation to follow the more sure opinion, and set aside the truly probably opinion, leaving aside the more sure, even the more probable. . . .

ART. III. The Use of Probability.

75 — Outside of the general principles which constitute the theory of probabilism, viz: *No obligation can be imposed unless one is sure of the thing;* or, *a doubtful law does not oblige*, there are certain special rules, confirming those principles, to be applied in particular cases.

I. In doubt, we must hold to what we presume. . . .

II. In doubt, we must judge after what ordinarily happens. . . .

III. In doubt, we must consider the value of the act. . . .

IV. In doubt, we must prefer what is favorable, and leave what is odious. . . .

V. In obscure things, we must do what is the less onerous. . . .

VI. 1st, In doubt, one presumes not a fact; it must be demonstrated. 2d, In doubt, one presumes as a fact what was to be done according to rights; 3d, In doubt, nobody is presumed to be malicious, unless he is proved so.

VII. In doubt, one must follow the more sure opinion. This rule must be applied only to practically doubtful cases. . . . As for speculative doubts, it is no more a rule, but a simple advice. . . .

80.— . . . Among several probable opinions, is it permitted to follow sometimes the one, sometimes the other which is contrary to it?

Yes! * . . .

* Here is, in full, that doctrine of probabilism, "that miserable doctrine," said the Bishop of Rhodez, "source of so much corruption in morals and so opprobrious for religion, that the enemy of man (the Jesuit) had sown in the schools during darkness and the sleep of the pastors, and which has, at last, been banished forever. It has come back triumphantly to-day, in spite of the coalition of Popes and Bishops, Pastors, Theologians and laymen, conspiring against it in order to destroy it."

It is easy, in fact, to see, by the preceding abridged chapters, and by many following cases, that the Jesuits have renounced nothing of that odious doctrine.

Moreover, in order to have it in all its splendor, it is good to have recourse to the ancient casuists, expressing more freely their thoughts:

Henriquez said, in 1600: "A scrupulous man is safe, if he chooses against his scruples what he judges to be probable, though he thinks that the other opinion is more probable; and the confessor must, against his own opinion, conform himself to that of the penitent, considering that it excuses the latter before God." (page 9.)

Cases of Conscience.

Case I.

Erroneous Conscience.

Florine makes this confession: I have lied, but I did not believe I was sinning, because I was constrained by a very grave motive; it was to excuse my cousin, and save him from a severe chastisement.

Ques. Can Florine be excused from sin, and is her action commendable?

Jean de Salas: "It is a true opinion, that it is not permitted to follow the more probable sentiment, although the less sure; but one may even take also the less sure opinion, when there is equality of probability.

"The most powerful motives are necessary to a person in the religious orders to believe that a revelation is probably true, by which God exempts him from contracting marriage, in spite of the common law; because God has never given such a dispensation. If, nevertheless, he had a true probability, he could, to avoid inconvenience, make use of a doubtful and only probable dispensation."

Grégoire de Valence: "It is asked if a judge may, without respect for persons, determine, according to the interests of his friends, his judgment in favor of a probability, indistinctly applicable to one or the other opinion, when a point of law divides the jurists?

"I say: If the judge thinks that both opinions are equally probable, he may, legally, to favor his friend, judge according to the opinion which authorizes the pretension of his friend. Moreover, he could even, to serve his friend, judge sometimes by one opinion and sometimes by the contrary one, provided no scandal results from his decision" (page 14).

Gilles of Coninck: "When the opinion of the Doctors is divided on some point, we can follow the sentiment which most pleases us, though the least sure and the least probable, provided it is truly probable."

Vasquez: "It is sufficient for an ignorant man to follow the opinion that he believes probable and which he sees taught by honest and learned men, though this opinion should be neither the more sure nor the best known. Sylvester says, it is sufficient for an ignorant man to follow the advice of his master and doctor."

Laymann: "A doctor may advise whoever consults him, not only according to his own opinion, but also according to the contrary and probable opinion of others, if this last advice is more favorable or agreeable to the one who consults him, . . . although the same doctor is persuaded that

Ans. She ought to be excused from the sin of lying, because of an invincibly erroneous conscience.

Moreover, she has acted well. What might be opposed to this decision is, that she might have had in view a formal evil: now that cause does not exist, because it is sufficient, in order to be meritorious, that the end in view shou'd be good in principle; so

certainly his sentiment is speculatively false, and that he could not follow it himself in practice . . . From this we conclude, that a learned man may give opposite advices according to the probable sentiments opposed to each other, observing, nevertheless, discretion and prudence."

Filliucius: "The authority of an honest and learned doctor makes a probable opinion, because such an authority is no slight foundation for a decision." (page 29).

Escobar: "Verily, when I consider so many diverse sentiments on the matter of morals, I think it is a happy dispensation of Providence, such a variety of opinions, helping us to bear along more agreeably the yoke of the Lord.

"Then Providence has willed that there should be several ways to follow in the moral actions, and that the same action might be found to be good, either in acting according to one opinion or its opposite.

"We are permitted to consult different doctors' authorities until we find an answer in harmony with our desires . . . on condition of having right intention in seeking a probable opinion which is in our favor, and in being firmly resolved to do nothing contrary to the probable conscience." (page 35)

Busembaum says, yet more clearly: "We must not condemn those who consult different doctors until they find one in harmony with their way of thinking, provided such a one is looked upon as prudent and pious and not peculiar."

Tambourin: "Ignorant confessors, who always imagine they do good in obliging their penitents to restitution, because it is more safe, ought to be blamed. Assuredly, if those penitents had sought to know what is more sure, they would not have waited for their advice, but they would have made the restitution themselves." (page 38.)

De Lugo: "If his advice is called for, in order to know if the penitent is obliged to make restitution, the confessor must follow the opinion of the penitent, if it is probable, and absolve him."

Louis de Scildere: "An inferior, who probably believes that his superior has no jurisdiction, must not obey him, even if the superior is in possession of his office.

"Likewise, an inferior who thinks that his superior's command exceeds the limits of his authority, must not obey him.

"Then, an accused person, who probably believes that the judge has no legitimate authority to interrogate him, is not obliged to answer."

Georges de Rhodes: "A good reason is sufficient to make an opinion probable. Now, the authority of a renowned and pious doctor is a good reason; because, I suppose that he is in the possession of a good reason; as his opinion is not rejected by the doctors as too old and absurd. Then the authority of one doctor is sufficient to make a probable opinion."

Térille: "Generally, in matters of faith as well as of morals, any man is permitted to follow any opinion directly, the least probable and the least

that, in conscience, one should be convinced of its excellency. Do not say that an object materially bad is opposed to the divine will; because, though it is opposed to the primary divine will, it is not opposed to the secondary one, by which God orders or permits us to do something, in supposing our ignorance insuperable. God, indeed, by His consequent will, wants man to do what he feels uncontrollably obliged to do.

sure, though he believes that the contrary opinion is the most probable and the most sure, and that it really should be so. But what I say is restricted to the opinion whose practical probability is certain for the acting agent." (page 43.)

Gobat, who accepts and develops this doctrine, gives it yet more savor, and suppresses the caution of Térille, in declaring with Oviedo, "that an opinion speculatively probable is also probable in practice." (page 56.)

Fabri: "Two contrary opinions, truly and certainly probable, are both safe, materially and formally.

"It is allowable to follow a less probable moral opinion, provided that its probability is certain . . . The opinion which permits one to follow the least probable, is in itself the most probable. Thus in following the least probable, *in actu exercito*, one follows really the most probable, *in actu signato*." This is the quintessence.

Casnedi: "It is always allowable, and in all matters, . . . to follow the opinion the least sure and the least probable in practice, without taking into account any stronger speculative probability attached to the contrary and more sure opinion; and this every time that the less sure and less probable opinion certainly preserves its safety and its practical probability, though less sure than the other." (page 67.)

Lacroix: "One is justified in acting according to what is probable, although it is evident that the contrary sentiment is more probable. . . .

"It is justifiable to follow what is less probable, not only in regard to positive human rights, but also in regard to divine and natural rights. . . . Because, if, with all respect to the human legislator, I can say to him: 'Although, according to the force of direct judgment, it is more probable for me that your law exists, however, in virtue of my deliberate judgment, less probable, I will not do its command.' Such language would not be contrary to the respect due to the author of the divine or natural laws."

Muszka: "If we meet in the matter of morals two opinions certainly probable, one is not always obliged to follow the one which is the most probable and the most sure. Consequently, it is sometimes permitted to act according to the least probable and the least sure opinion." (page 103).

At last, to close by a recent and practical application, here is how the *Petit Catechisme de Marotte*, the disseminator, par excellence, of these doctrines, expresses itself on this subject:

"Ques. Can we act according to a conscience probable?

"Ans. In what concerns faith, the validity of sacraments and in all, cases when one is held to procure an effect that one is not sure to obtain, without taking the opinion the more sure, we must choose that opinion; but outside of this case, one may, without sin, follow the most probable, though the least sure; acting thus, is to act prudently."

Besides, a man can certainly sin in acting against a conscience which is insuperably mistaken, then he may also deserve reward in acting according to its orders.*

Case II.

Erroneous Conscience.

1. The mind of Ferdinand is often haunted by wicked desires, for instance, to revenge himself on an enemy, to commit shameful attempts against decency, by contact or otherwise, or the desire for fornication. But he has never acknowledged them in confession, thinking that these acts, purely internal, were not sins.

2. Georges, during childhood, has had for many years the habit of polluting himself, but did not admit it in confession, not thinking it was an evil. But later, knowing the truth, he doubts the validity of those confessions, and asks himself if he is in duty bound to make a general confession.

2. Gustave, a child ten years old, has abandoned himself to obscene touchings on the person of his first cousin; he has avowed it in confession, but omitting the circumstance that it was his cousin, because he was ignorant that a sin was more grievous on that account. Later he recognizes his error, and inquires if he must confess anew, indicating that circumstance.

Ques. 1. Had Ferdinand an erroneous conscience relative to his wicked desires?

Ques. 2. Did Georges ignore invincibly the malice of pollution?

Ques. 3. Is Gustave obliged to recommence the confession of his sin,—yes or no?

* Charli: "We discern in God two kinds of will, which constrain the will of man, a will antecedent, primitive, which is such by itself; and a will consequent, which comes after and accidentally. By the antecedent will, God commands directly with a primary intention, that men should or should not do a thing. Such is the will by which God . . . forbids lying. The consequent will is the one by which God commands indirectly; and in the supposition of an error on man's side, that he should or should not do a thing.

"Thus it is God who wills that a man should lie, if we suppose that by an invincible error that man believes that it is good to lie in such circumstance." (page 126.)

Ans. Question 1.—Many affirm it, as Elbel, Sanchez, Lacroix; but the contrary must be admitted, with St. Liguori.

Ans. Question 2.—Georges may have been in good faith at the beginning. But it is difficult to believe that his good faith has lasted so long.

Ans. Question 3. — Gustave is not obliged to a new confession in order to add the omitted circumstance, if, at the moment when he committed the sin, he was not aware that in such a case there was a particular gravity, because the difference is not in the act but in the principle. In principle, insuperable or absolute ignorance excuses him from the sin of incest. Let not his peace of mind be disturbed.

Case III.

Doubtful Conscience.

Faustine, a young lady, twenty years old, finds herself in an inextricable embarrassment. She has made a vow of chastity at the time of her first communion, but she doubts that there was sufficient deliberation, either on account of her age, or of devotion, and asks if she may accept an advantageous marriage that is proposed to her.

Ques. How can we solve Faustine's doubts?

Ans. With St. Liguori, the vow must be observed, even in doubt of sufficient deliberation. That must be admitted in theory, because the utterance of the vow is considered as having the value of an act. But that doctrine does nor seem to be absolute; it may happen, in certain circumstances, that the necessary deliberation can not be easily determined, and it may even be presumed that it was missing altogether.

The advice of the bishop is necessary in this case.

Case VII.

On Probability.

Philibert, a professor of theology, after having discarded all the systems on probability, has imagined a new one that he believes will solve all difficulties in cases of conscience. Here is the

foundation of his opinion, . . . a well-known law compels, an unknown law does not. Then, for the same reasons, a law imperfectly known obliges but imperfectly, more or less according to the degree of knowledge; but there is always a certain obligation, because there is always more or less danger of materially violating the law. Moreover, if a law constrains us more or less, according to the degree of our knowledge, the motive which excuses us from obeying the law, must be in proportion to the gravity of the obligation. This is why a not very powerful motive excuses us from an obligation imperfectly known.

Ques. What shall we think of the new system?

Ans. Philibert supposes, without foundation, that it is not allowable to run the risk of materially violating the law when it is not very well-known.

What evil is there in that material violation, if I ignore the obligation? How can I commit a sin if I ignore what makes it a sin? Besides, this assertion would lead us to a condemned tutelege; for, if we admit it, it would not be possible, any more, to act from an opinion, however probable it may be; because we would be in a perpetual fear of materially violating the law, if the surest way was not chosen. Moreover, if that material violation exists, it is not voluntary; because, not knowing the law, there is no intention but ignorance.

Case IX.

Authority of the Confessor Relative to Opinions.

The following dialogue takes place in confession between Lucanus and the priest Aquilinus:

Confessor.— Have you not made an usurious contract?

Penitent.— My father, it is true; but I know that honest men do so with the approbation of learned men.

Confessor.— That doctrine is not mine, and you must tear up that contract, or at least indemnify your partner, in giving back what you owe him.

Penitent.— I beg your pardon, my father, while honest and learned men approve of such a contract, I think, at least probably, that it is not forbidden.

Confessor.— It is not my doctrine, and I profess the contrary opinion. Go, my friend, I cannot absolve you; look for another confessor who will share your own opinion.

Lucanus goes to Pancrace, another confessor, and sets the case before him: "Do not trouble yourself," said Pancrace, "your opinion is not probable for me, but I know that it is looked upon as such by many very learned men, you may set your conscience at rest; go in peace."

Ques. May a confessor, looking upon an opinion as not probable, but approved by renowned theologians, permit his penitent to follow it?

Ans. The confessor cannot permit the penitent to follow false opinion, because his duty is to lead him from error; but if the penitent wants to follow an opinion admitted as probable by well-known theologians, the confessor has no right in the case, though he looks upon that opinion as not probable. Because, if an opinion advocated by several theologians; for instance, by five or six of them recommended for their honesty, science and prudence,—if it has not been condemned, if it is not in opposition to a law then in force, if it has not against it evident reasons, that opinion may be admitted as probable, and consequently, cannot be prohibited by a common confessor.*

Case XI.

On the Change of Opinion.

Lucien, an heir, recognized as valid a will made in his favor, though in it certain necessary formalities are missing; he relies for that on the probable opinion of doctors. Another day, changing his opinion, he asks for and obtains through the Court of

* It is exactly what was said more clearly by Jean de Salas, as early as 1607: "Any confessor may, against his own sentiment, absolve the penitent who follows a probable opinion, though the least sure, no matter if that opinion is, or is not prejudicial to others." (page 11.) And Sotus, Vasquez, Busembaum, etc.: "Not only may he, but he must." The Jesuits have never changed their opinion on this, any more than on anything else.

But the confessor Aquilinus would have done much better by holding his tongue, according to the pure doctrine of the Jesuits.

"When," says the celebrated Jean Marin, "the confessor believes with probability that his advice will be rejected, he must not say anything;

Justice, the setting aside of a will equally irregular, made in favor of Caius, in order that himself, the nearest of kin, shall inherit.

Ques. 1. Is it permitted to change one's opinion, and if so, when?

Ques. 2. Same as Lucien's case.

Ans. to the first question. — It is permitted to change one's opinion if there is no compability between that decision and a true probability; that is to say, provided that in changing one's mind, one follows another probable opinion, and that there would be no contradiction either theological or practical. Because one who follows one of two probable opinions, does not cease to look upon the other as probable, and he remains, as before, in the same uncertainty towards the other. Then, occasionally, if it is for his advantage, he may follow that other opinion, though previously he had followed the contrary one, except in cases when that change of opinion would suppress all probability.

Ans. to the 2d question. — Lucien, having always followed a probable opinion, may have legitimately changed his mind in practice on the validity of the illegal will, according to diverse circumstances; for, in keeping his inheritance, before the decision of the judge and in spite of its irregularity, he has acted according to his rights, having followed a probable opinion; but he has not ceased for that to look upon the contrary opinion as probable, and he has not renounced the right belonging to any citizen of asking the setting aside of the other will if it is for his advantage to do so. Then he has used his right in asking for the annulling of the will before the court, and he must not be disturbed.*

even if the sin in question should be a continued action, injurious to others. For instance, the penitent exercises usury, and is, on this matter, in a state of invincible ignorance, on account of reasons given to him by others whom he has consulted. The confessor sees that his advice will be of no avail, neither to make a restitution of illicit gains, nor to prevent it for the future; therefore, he must not say anything." (page 125.) It is also the opinion of Suarez, Escobar, Gobat, Trachala, etc., etc.

* Tambourin was of that opinion when he wrote in 1659: "It is probable that one can be indemnified for the loss of one's reputation, by money; It is also probable that one cannot be indemnified at all. Can I, then, to-day, I, whose reputation has been blackened, exact from the defamer an indemnity in money; and to-morrow, and even to-day, can I, myself, who has defamed the reputation of another, refuse to indemnify him by that

Treatise on Laws.

Law is the external rule for human acts, as conscience, the practical voice of reason, is the internal rule for the same acts.

PART FIRST.

LAWS IN GENERAL.

Nature and Qualities of the Law.

81. — Law is a disposition of order in view of the common good, promulgated by the one who has the care of the community. . . .

We distinguish several kinds.

1. Divine or human. . . .
2. Natural or positive. . . .
3. Ecclesiastical or civil. . . .
4. Moral or penal or mixed. . . .
5. Affirmative or negative. . . .
6. Prohibitory, annulling, or tolerant. . . .
7. Favorable or odious. . . .
8. Written or transmitted by custom. . . .

82. — What are the qualities or conditions of the human law?

It must be: possible, honest, useful, just, permanent or stable, and promulgated. . . .

CHAPTER II.

The Legislator.

83. — We call the legislator, the sovereign who has the power, independent and supreme, or subordinate, to make laws for the community which he governs. . . .

same money, for the loss of his reputation? I am sure that one can legally, in such a case, do the one or the other, according to one's own opinion." (Page 38.)

I. God alone is the supreme legislator. . . .

II. The church has the power to make laws in order to accomplish the end which she has in view. . . .

84. — III. Princes can make laws in view of the temporal happiness of their subjects, . . . because they have received from God the power to govern their subjects.* . . .

IV. We must always obey the just laws of legitimate superiors; their authority coming directly from God, or from God through the medium of the people. . . .

When honest and learned men are not agreed upon the injustice of a law, we must look upon it as just.†

* But it is on condition that they shall govern according to the divine law, that is to say, according to the will of the Catholic Church.

"Any Christian prince," said Philopater, "as soon as he manifestly sets aside the Catholic Faith, and wants others to do the same, forfeits all power and dignity through human and divine rights; this is not only certain, but of faith. (page 445.)

Bellarmine has clearly expressed this principle, in a passage of his Controversies which Father Clair qualifies as "immortal."

"Spiritual power is independent of temporal things, but it lets them operate as they did before they were united, provided they are not an obstacle, or are not necessary to the spiritual end in view. For if there is at times a resemblance, the spiritual power can and ought to repress the temporal one, by all means and expedients which it judges to be necessary. . . . It has the right to transform kingdoms, to take them from one and give them to another as a sovereign spiritual prince, if this is necessary to the salvation of souls.

"It is not permitted to Christians to tolerate an infidel or a heretical king, if that king tries to lead his subjects into heresy or infidelity; but it is to the Sovereign Pontiff, who has the care and the charge of religion, that belongs the right to judge if the king leads or not into heresy. It is the Sovereign Pontiff who should judge if the king must be deposed, or not. . . .

"If Christians have not formally deposed Nero, Diocletian, Julian the apostate, Valens, Arian, etc., it is because they were not powerful enough." (page 447.)

Jean Ozorius: "The power of the keys is given to Peter and to his successors; this power is sufficient to make kings, and to depose them, when they turn aside from the faith or oppose its doctrines.

"When the spiritual good demands it, the Pope can remove lords, kings, and emperors, and deprive of their kingdoms those impious, disobedient kings who prevent the publication of the Gospel." (page 461.)

† What shall we think, according to this expression, of laws establishing taxes?

Escobar explains the question in the following very easy terms for the tax-payers:

"The subjects are excusable for not paying taxes, by reason that: as the prince justly imposes the tribute according to the opinion which

CHAPTER III.

Object and Subject of the Law.

ART. 1. — Object of the law.

88. — The object of the law is all that it can command or forbid. . .

ART. II. — Subject of the law.

91. — I. Man is born under and remains subject to the natural law . . .

II. Those alone who have the habitual use of reason are under submission to the human law. . . .

92. Children not having reached the age of reason, and the insane, are not under submission to the laws. They may consequently, eat meat when the Church forbids it.

However, insane persons having the use of their reason at certain intervals, people under the effects of drink, or when asleep, are under the laws, because they usually possess the use of their reason; they may be exempted occasionally when they are not under the control of their reason. It is not permitted to give them meat on the prohibited days.

Heretics, schismatics and others, being baptized, although not Catholics, are subject *per se* to the ecclesiastical laws, because, although rebels, they do not cease to be subjects of the Church. . . .

93.—Ques. Are ecclesiastics obliged to obey the civil laws?

Ans. No; not the laws in force which are contrary to their profession, or to their sacred canons.* . . .

assures with probability that it is just; in the same way, the subject may justly refuse to pay the tribute, in following the opinion which affirms probably that such tribute is unjust. It is the sentiment of Sanchez, Lessius, Lopez, Molina, Filliucius. I approve this sentiment." (page 35.)

* These are timid formulas, and such as are required by the rigor of the time. But the truth, which oral teaching alone dares to proclaim in its integrity, is contained in the words of *Emm Sa:* "The revolt of an ecclesiastic against the king is not a crime of high treason, because he is not a subject of the king."

Ferdinand de Castro Palao said no less clearly: "An ecclesiastic, as such, being exempted from the lay jurisdiction, it follows certainly that he cannot be condemned by a lay judge."

Jacques Gordon: "I assert here, that ecclesiastics are exempted from civil authority. . . .

94.—Ques. Must foreigners obey the laws of the country in which they find themselves?

Ans. Yes, they must fulfil contracts, and obey the laws necessary to the public good.

As for other laws there are three probable opinions:

The first exempts them, setting scandal aside, because the law has its effect on subjects only.

The second obliges them to obey all the laws; because *the one who enjoyes the advantages must also bear the burdens.*

The third one makes a distinction: they must obey *all* laws if

"It would be a great indecorum to aver that ecclesiastics are liable to condemnation by civil laws. . . ."

Dicastille: "That the clergy must be exempted from lay authority, even in temporal things, is evident, because nobody is under subjection to one who has no jurisdiction over him. Now, the prince has no jurisdiction over ecclesiastics, or clergy. . . . They are exempted from the lay power, not only by canonical, civil, and human rights, but also by divine rights."

Jacques Platel: "Ecclesiastics and religious orders are, but indirectly, under the civil laws; because, not being under the jurisdiction of secular magistrates, they are not obliged directly and immediately to obey their laws, but only in consequence of the law of nature, and with the presumed consent of the Pope, on account of the conformity of these laws to natural equity.

"The laws which dispose directly or indirectly of the properties or persons of ecclesiastics are contrary to their immunities. . . . It follows then, that they are not obliged to obey the laws concerning the payment of tributes and taxes." (page 514.)

J. D. Taberna: "Are the clergy under the jurisdiction of the civil laws?

"As to the directive force, the clergy are obliged, at least indirectly, to submit to the common laws of the Republic in which they live, if the object of these laws concerns them somewhat, and are in no way relative to the clerical profession, the holy canons, or exemptions of the church.

"I have said, as for the directive force, because speaking absolutely, aside from the prerogatives accorded to princes and the consent of the Pope, secular princes have no compulsory power over the clergy; but when the latter are culpable, they must be punished by their superiors only." (page 525.)

Laymann: "Ecclesiastics are in submission to the laws of secular princes according to the directive force . . . but not according to the compulsory force, because they do not incur the judgment of the civil law. . . .

"So the civil laws which annul a contract, a will, by incapacitating persons to contract, to make a will . . . have no power on ecclesiastics."

Busembaum: "The clergy being exempted by divine right from civil authority, civil laws do not bind them directly or by the compulsory force; it follows that the secular prince cannot punish them.

"To strike an ecclesiastic, to arraign before a secular tribunal, is a personal *sacrilege.*

that country is the end of their journey; otherwise, only *negative* laws. Such is the opinion of Suarez, who recognizes that the first opinion is also probable. . . .

CHAPTER IV.

Promulgation and Acceptation of the Law.

ART. 1 — Promulgation.

97 — This is the publication of the law by legitimate authority, to impose its obligation on subjects. . . .

ART. 2 — Acceptation.

98 — This is the submission with which the subjects, at least the best and wisest part of them, accept the law formally or virtually.

I. By itself, for its power, the law does not depend in any way on the acceptation of the people; otherwise all legal authority would disappear, and a subversion of social order would follow.

II. Accidently, a law that is not accepted has no power, by the tacit or express consent of the superior, because of a privilege, or of a tolerated custom.

99 — Ques. Is a law in force if the best and wisest part of the people has not accepted it?

Ans. There is controversy. . . .

Ques. Must we obey a law of the church which, prohibited by a civil government, has not been accepted?

Ans. Yes; because the church has received her authority from Christ, not from a civil power, from which she is quite independent. Christ said: "Whatever thou shalt bind on earth, shall be bound in heaven." (Math. 16: 19).

CHAPTER V.

Obligation of the Law.

ART. I — The force of the obligation. . . .

ART. II — Manner of satisfying the obligation of the law. . . .

ART. III — Causes exempting from obeying the law.

Section 1: *Nature of these causes.*

108.— These causes are either *eximious* or *prohibitive.*

The first exonerate us completely from the power of the law; for instance, if we retire into a country where the law is not enforced. The second are those which prevent the subject from remaining under the power of the law, or from fulfilling it, or which excuses him from it. They are subdivided into *ignorance* and *impotency*. . . .

SECTION 2. *Voluntary application of these causes.*

110.—They may be applied directly or indirectly; as to whether the author wishes to escape the obligation of the law or is impelled by another motive, having foreseen, however, the impossibility of obeying that law.

Besides, those causes may be near or removed; near, if the law constrains immediately; removed, if it allows a certain interval of time.

I. One may always apply *eximious* causes, and, according to the opinion the most probable, in a direct and near manner. . . .

II. But one cannot apply directly *prohibitive* causes, near or removed. . . .

III. Nor even indirectly prohibitive causes of the near manner, if there is not any proportionate necessity besides. . . .

IV. According to the more probable opinion, one may apply, even without motive, removed and indirectly prohibitive causes.

CHAPTER VI.

INTERPRETATION OF THE LAW AND OF EPIKEIA.

SECTION 1. *Interpretation.*

112.— The interpretation of the law is its natural explanation according to the legislative spirit.

It is authentical, doctrinal and usual, being made either by the sovereign, by learned men, or by custom.

Strict or liberal. . . .

Simple, comprehensive or extensive; if we give to the words their proper sense, or a larger one.

SECTION 2. *Moderation.* (Epikeia).

115.— This is the kind, but just interpretation of the law, by which it is understood that the law does not include a case which is not mentioned in the text; as if the legislator, though prudent, had not wished to foresee or mention it. For instance, the law forbids the carrying of arms in the night; I may carry some if I am obliged to go out, and if I risk being attacked by my enemy, who has sworn to take my life.

CHAPTER VII.

Dispensation of the Law.

114. — Dispensation is the relaxation of the law in a particular case.

It may be:

1. Legal or illicit, if the cause is just or not.
2. Valid or void, if it exempts us from obeying the law or not.
3. Absolute or conditional, if it is accorded with or without conditions.
4. Surreptitious or obreptitious, if we mention exactly what is to be done, or if we present a case in a false light.

ART. 1. — Power which exempts. . . .

ART. 2. — Causes required in order to be exempted. . . .

ART. 3. — End of the exemption.

It can cease for three reasons: 1st. When the cause is at an end; 2nd. Its annulment; 3rd. Renunciation.

CHAPTER VIII.

Cessation of the Law.

PART SECOND.

Different Sorts of Laws.

Natural and divine law. — Ecclesiastical and civil law. — Annuling and penal law. — Unwritten or traditional law. — Favorable law.

CHAPTER I.

Natural and Divine Law.

ART I. — Natural law.

122. — The natural law is the divine will manifested by a natural light, commanding what is necessary to the preservation of good order. . . .

ART. II. — Positive divine law.

There are two kinds, the ancient and the modern.

CHAPTER II.

Ecclesiastical and Civil Law.

ART. I — Ecclesiastical law.

125. — This law is established by the ecclesiastical power, for the good government of the church and the eternal salvation of souls.

The compendium of the ecclesiastical laws constitute the canon laws, which make three volumes. . . .

126. — What are the Roman Congregations?

There are eight of them. . . .

5. The Congregation of the *Index*, founded by St. Pius V., comprises the cardinals and several learned doctors. Its unique function is of great importance for the good of society, ecclesiastical as well as civil; because it inspects all the published books, in order that they should propagate nothing contrary to religion and

good morals. Those that are judged injurious to the faithful are noted carefully, forbidden, and inserted in the Index, which is called, for that reason, "The Index of Forbidden Books," to prevent the faithful from reading them. Sometimes, however, books are condemned by the Congregation of the Holy Office, and by the Sovereign Pontiff himself in brief and dogmatical particular constitutions, and especially if they are infected with heresy.

6. The Congregation of the Holy Office, or *Sacred Universal Inquisition*, is called supreme, and is composed of cardinals, prelates and theologians.

They attend to heresy, and to doctrines suspected of heresy or contrary to religion. It was founded by Paul III., and confirmed by Sixtus V. . . .

ART. II. — Civil law.

131. — The law, or civil rights, is the collection of laws and decrees made by temporal princes in view of the good of society.

CHAPTER III.

Penal and Annulling Law.

ART. I. — The Penal law.

133. — This is the one which obliges one to do something, or to avoid it, only under threat of a temporal punishment, that is to say, that such law should be accepted as just.

I. — There cannot be any *purely* penal law, that is to say, one which does not oblige conscience at all; because any order from the sovereign must oblige in some way.

II. But a law *simply* penal can be established: it obliges in conscience either to obey the law, or to suffer the penalty in cases where the law is violated. . . .

ART. II. — The Annulling law.

135. — This is the one which establishes that an act is not valid in its principles, or, that it may be invalidated by a judgment. There are then annulling laws, *ipso facto;* of others only after the sentence of the judge.

CHAPTER IV.

Unwritten and Traditional Laws.

137. — Custom, considered in its cause, is the way of acting which is induced by the acts of the community, or of the majority; in its principle, it is a right constituted by morals, which is accepted as law when the law is wanting.

There are: 1st. Custom according to rights, or according to law. . . .

2. Outside of the law or right. . . .

3. Against the law or right.

CHAPTER V.

Favorable or Privileged Law.

141. — Privilege is a constant and permanent favor accorded to certain persons, or certain dignities, by the sovereign, against the common law, or outside of that law.

It is: 1. Personal, local, or real.

2. Against the law, or outside of the law.

3. Agreeable or odious.

Cases of Conscience on the Laws.

Case XII.*

Are we under Obligation by a Law, or an Opinion Founded on a False Presumption?

1. The shepherd Tityre watching prudently his flock, goes inadvertently into a deep sleep. The flock goes grazing in the adjoining fields; the rural constable appears, summons Tityre before the justice, and the shepherd is fined and condemned to pay damages. The latter, looking upon this judgment as unjust, does not hesitate to indemnify himself, partly on private property and partly at the expense of the public treasury.

2. One night his donkey is carried away by a thief; but he escapes into the neighboring fields, where he causes damages. Tityre is again condemned; but, indignant, has recourse to the same compensation.

3. At another time, the unfortunate man is condemned to pay a debt which he had already discharged. As he has no means to prove it before the judge, he hastens to calm his grief by a new secret compensation.

Ques. 1. Must we obey a law or a judgment founded on a false presumption?

Ques. 2. Ought Tityre to have accepted the sentence; or had he any right to compensate himself in these three cases?

Ans. Question. 1. — First, No, if the judgment, that is to say the law, is founded only on the presumption of a particular fact, on error, fraud, or damage; because if the truth of the fact does not exist, the obligatory principle disappears also.

2. Yes, if the judgment is founded on the presumption of the general danger of error; because the common interest demands

* See my speech of the 7th of July, 1879.

that all should be held by that obligation, on account of the danger of temptation (*hallucinatio*), and because the judge can deal only with exterior facts.

Ans. Question 2. — First, Tityre has acted badly in seeking a secret compensation in the first case, because he has been justly condemned. The damage exists really; and, besides, the shepherd has committed a fault at least judicial, which justifies the sentence. The law, in fact, seeks to make men more prudent and more vigilant in order to prevent damages: Tityre is then obliged to make restitution.

2. In the case of the donkey, the presumption of the judge is false, the shepherd having committed no fault; not even judicial. He could not be punished for his lack of vigilance; because he has not been able to prevent the damage, which must in no way be imputed to him. If he has been condemned on presumption of neglect, which he has not and could not commit, the judgment is false and materially unjust. Then, as for Tityre, it is a case in which he has no responsibility and he must be absolved. There is no injustice on his part, and he has the right to exact compensation.

3. If he has paid already, he cannot be obliged to pay over again, because the motive of the judgment is false: then the judgment, being based on a false principle, is materially unjust; and Tityre cannot be accused of injustice if he has sought a compensation, this being the only means to compensate himself.

Case XVII.

License at First Refused and Later Accorded by the same Superior, who does not Remember the First Refusal.

Leopold, bound by a perpetual vow of chastity, wishes to marry Sylvia. In order to obtain a dispensation, he writes to the Holy Penitentiary, under the fictitious name of Titius, for instance, as is done in secret affairs. He alleges as a reason, the serious temptation to which he is exposed, making his vow very difficult to keep.

He is refused. Not being discouraged, he tries once more.

After a month or two, he writes again to the same Congregation; but using another name, Simpronius for instance, and without speaking of the first refusal, mentioning however the same motive. His ruse is successful this time, and he obtains the dispensation.

Ques. 1. What is it that we call an obreptitious or a surreptitious dispensation, and when is it of no value?

Ques. 2. Is Leopold's request surreptitious and of no value?

Ans. Question 1. — We call obreptitious dispensation, the one in which a false reason is alleged as the principal motive, which reason, had it been known, would have prevented the dispensation.

We call it surreptitious, when a truth is hidden which ought to have been indicated, according to the rights and regulations of the Curia, above all, if any ruse or fraud is used. It is evident that such a dispensation is of no value. But if the false reason is but a determining motive, without which the dispensation would have been accorded, but with greater difficulty; or if we hide a truth which is not directly and intrinsically related to the subject of the dispensation, or that one is not obliged to declare after the regulations of the Curia, the dispensation is valid; because the superior is supposed to have been willing to give it, provided the principal motive is mentioned.

Ans. Question 2.—No, this dispensation is not at all surreptitious, though perhaps the superior would have refused it if he had recalled to mind his first refusal; the presumption that the superior would have refused has no foundation. If he accords it on account of the same reasons given before, it is a proof that those reasons are sufficient for the dispensation. No matter about the first refusal, because it has no relation to the case; and to refuse the dispensation for that reason only, would be a breach of common sense. This is evident; for if there is a just reason, it is better to palliate the rigor of the first refusal that to confirm it. Then the circumstances of the first refusal has no relation with the validity of the subsequent dispensation. Leopold was not obliged to recall it to the superior, and that dispensation, not being surreptitious, is valid. Do not object, because Leopold, gave another fictitious name; no attention is paid to names by the Holy Penitentiary,

since pseudonyms are used so habitually. No matter whether the name is Titius or Simpronius. Do not say that Leopold can be accused of the *criminal intention of deceiving the superior;* because we cannot deceive when we use our rights.

Case XIX.

The Annulling Law.

Thirsus having become an heir, perceives that the will made in his favor lacks an essentially legal formality. However, without saying anything about it, he receives the inheritance and enjoys it quietly.

Ques. What should we advise Thirsus to do?

Ans. The most probable opinion commands that Thirsus should not be troubled, if no judgment interferes; because, according to many theologians, an annulment of such a nature does not exist (*ipso facto*), but must be declared by judgment.

Case XX.

The Penal Law.

Sapricius is accustomed to carry in his wagon, on his horse, or in some other way, wheat, wine, and other goods under toll-duty. He evades it whenever he can do so, without fear of a fine, either in passing during the night by an out-of-the-way road, avoiding the custom officers, deceiving them by ruse, etc. He does not think he is doing any harm; because the duty charged is considerable, and often established uselessly for the public interests, and because the law which establishes it is purely penal. However, going to confession and feeling a scruple, he asks if he has done well.

Ques. 1. Do we establish simply penal laws?

Ques. 2. Has Sapricius sinned? is he obliged to make restitution?

Ans. to the 1st Question. — 1. Laws of such a nature can be established, that is to say, to be enforced in a disjunctive manner, either to obey the law, or to pay the penalty if the offender has been taken in the very act. A law has obligatory force only by the will of the legislator; and the legislator can only enforce the penalty if it is necessary to the common interest. Now,

this suffices for certain laws not very important for the good order of society.

2. Certain purely penal laws seem to be established, at least in certain localities, so think many theologians. St. Liguori says: "The laws of the cities interdicting the cutting of wood, grass, etc., or fishing or hunting, do not create obligations under the penalty of sin; such is the custom.— But what are the purely penal laws in each locality? Learned and experienced men of the place alone, can judge.

Ans. to the 2d Question. — There is controversy between the theologians. Some say, Yes, others say, No. This is the opinion of Sanchez and others, recalled by St. Liguori, who does not express any personal opinion: "Sanchez thinks that nobody, going straight along on his way, is obliged to pay toll for passing a door or a bridge established for the keeping of roads in order; because it would be hard to oblige strangers to know this regulation about doors and bridges." And Sanchez, with others, looked upon that opinion as probable, even if goods are hidden, or if one hid himself; because those duties established are only to be paid if they are asked for. In a general way, speaking of all duties, Lugo thinks that the people ought to be informed beforehand, in order to oblige them to pay. One cannot oblige an individual to make a restitution for that of which he has deprived the treasury, if he is persuaded, in a probable manner, that amongst a great number of duties, *he has paid some unjust ones*, or that he has sufficiently contributed to the expenses of the State."

According to these authorities, Sapricius must not be disturbed.*

* See Treatise on Justice and Rights. No. 744.

Treatise on Sins.

PART I.

Sins in General, Their Nature, Gravity and Distinction.

CHAPTER I.

Nature of Sin.

143.— Generally, sin is thus defined: It is a free transgression of divine law, in other words, of any law which obliges in conscience.

There are several sorts of sins:

1. Present or habitual.
2. Mortal or venial.
3. By commission or by omission.
4. Against God, others, and one's self.
5. Of malignity, ignorance or weakness.
6. Formal or material.

For a formal sin, besides the objective malignity of the act, the attention of the mind and the consent of the will are necessary.

I. Attention of the mind. . . .

II. Consent of the will. . . .

145.— There is no obligation to positively resist the allurements of the flesh, when such a resistance does nothing but excite them more; a material resistance is yet less necessary. . . .

Likewise, we are not compelled to oppose a positive resistance to any temptation of long duration; because it would be too difficult, and we would be exposed to innumerable scruples.

CHAPTER II.

GRAVITY OF SIN, AND ESPECIALLY OF MORTAL AND VENIAL SIN. . . .

CHAPTER III.

DISTINCTIONS OF SIN.

ART. I.— Specific distinctions.

The specific distinction of sin comes from a particular malignity, that is to say, from a different fault, by which a sin differs essentially from another one.

159.— Example: Four sins are committed by the one who, bound by a vow of chastity, sins with a married relation; because he violates four different virtues: chastity, religion, piety and justice. . . .

ART. II.— Numerical distinction.

We treat numerical distinctions in the same manner; for it is evident that sins distinguished by their kinds, may also, and for better reason, be distinguished by their number; so there is no particular rule to give on that subject. . . .

160. — Example: A single sin is committed when, in view of fornication, one indulges in sensual contact with a woman, kissing, holding obscene talk, and then fornicating; because all these acts, in their nature, precede and bring out the completion of the final act. But if in the beginning the touching only was intended, and that later, blinded by passion, fornication had resulted, there would have been two sins then, and to confess fornication only would not be sufficient. . . .

Several sins are committed when more than one act is accomplished sucessively with the same woman; because each act is final in itself, and constitutes a complete intention.

PART II.

KINDS OF SINS.

CHAPTER I.

INTERNAL SINS.

167. — They are divided into three classes: 1st. The pleasure in which one delights (*delectatio morosa* *) when one delights freely in the evil represented by the imagination, without desiring it.

2nd. The joy, when one takes pleasure, and with deliberation, in thinking of the accomplished evil.

3rd. The desire, or act of the will, in view of obtaining, and later of accomplishing, a bad action. It is called efficacious if there is intention or absolute design in obtaining; Inefficacious, if there is but a feeble desire, or conditional consent; for instance, if we say: I would like to steal, if I only could; I would like to possess that woman, if I was not afraid of losing her or my reputation. . . .

170. — Does the pleasure in which one delights receive a particular malignity from the circumstances in view, as the desire and the joy? † . . .

Ans. Controversy. . . .

Ques. Can we desire to do evil, if that evil is permitted?

Ans. Controversy. . . .

172. — Ques. Can we rejoice at the voluntary omission of some forgotten precepts? . . .

Ans. Controversy. . . .

173. — The doctrine of St. Thomas teaches that there is no sin if a nocturnal pollution pleases us, as being a natural relief;

* I do not find any expression to translate the *morosus* spoken of by the casuist. It is a word of low Latin which has nothing in common with the *morosus* of the ancient authors. In theological dialect, that *morosus* has been deduced from *morari*. *Delectio morosa* signifies a pleasure in which one delights.

† This is the right place to insert the ingenious species imagined by St. Liguori and recalled by Moullet: "If any one takes delight in thoughts of criminal relations with a married woman, not because she is married, but because she is beautiful, abstracting the circumstance of marriage, such a deliberation has not the malignity of adultery, but of simple fornication." (Compendium, vol. 1, page 126, 1834).

but the pleasure inherent to the pollution, being shameful, is culpable in itself. This is the explanation of the holy doctor. St. Liguori does not want even that it should be so understood for the pollution resulting from touch or obscene dreams; because, in this manner, it is culpable objectively. It is otherwise if it is a question of a purely natural pollution, when nature relieves herself. Besides, in practice, we must avoid taking pleasure in it, although honest in principle, for fear of the danger which may result. . . .

CHAPTER II.

Capital Sins.

We call them thus, because they are as the source of the other sins. Considered in general, they are rather vices, than sins, properly so called.

There are seven of them: pride, avarice, luxury, envy, anger, laziness, and gluttony. . . .

Cases of Conscience on Sins.

Case I.

Gravity of Sin.

Mœvius, a kind-hearted and pious man, tormented and pursued night and day by temptations, does not know if he has given his consent or not. He is particularly troubled on account of certain hallucinations, or even indecent actions, whose victim he has been during a light sleep, so it seems to him.

Ans. Has Mœvius grievously sinned?

Ans. He must be advised to be at peace, because he does not seem to have given his consent; at least, in a perfect manner, to the temptation.

Case II.

Specific Distinction of Sins.

Alexander confesses himself to have bad desires, but without indicating either the object or the condition of the persons.

Ques. Ought he to confess all these circumstances?

Ans. Yes; his confession is incomplete; . . . if the woman he was desiring was married, a relation of his, or bound by the vow of chastity, he ought to have declared it.

Case III.

Specific Distinction of Sins.

Nicolinus, on a Sunday, and also on a day on which he had received the holy communion, sinned with Bertha his servant, who is his cousin in the third degree; in his confession he says, only, that he has had relations (*rem habuisse*) with a woman.

Ques. Has he sinned against the integrity of the confession?

Ans. His confession is bad, having omitted the specific cir-

cumstance of the sin committed with a relation. But he is not obliged to declare that she was his servant; because the sin does not become, by this, a new kind; unless it should be a question of a young girl confided to a master by her parents; in which case the contract would have been broken.

Case IV.

Numerical Distinction of Sins.

Basile, induced by a grave temptation against chastity, gave his intimate consent to a bad desire; he proposes to himself to sin really (*efficaciter*), and looks out for the occasion all day long, with his desire always present, and making no effort to overcome it. At last, improving the occasion, after obscene talk and indecent gestures, he accomplishes the external act of sin. Repenting, he made this confession: "I have committed once, the sin of fornication."

Ques. Is Basile's confession correct?

Ans. His confession is complete, because he has committed but one sin. In fact, the antecedent acts had but the same bad aim, and involve themselves with it in the same action.

Case VI.

Numerical Distinction of Sins.

Delphin, wishing to seduce a young girl, uses different means for that purpose, unchaste and endearing talk, love letters, obscene engravings, sensual contact; but the sin, through fortuitous circumstances, could not be consummated.

Ques. Has he committed several sins?

Ans. He has committed as many sins as there are bad acts of different species, . . . because the sin not having been consummated, all its divers means, each one bad in itself, cannot be attributed to a common aim, and be assimilated with the consummation of the sin.

Case VIII.

Internal Sins.

Blaise, a man of joyful disposition, experiences great pleasure for several motives:

1. At the death of his brother, because he remains the only heir.

2. At the death of his boy five years old, on account of his future happiness, and the diminution of the burden for the family.

3. Because, on the day before not knowing that it was a fast day, he escaped that painful obligation without sinning.

4. For seeing women maltreating each other, blaspheming and cursing; and also in hearing of a theft skilfully accomplished.

Ques. What is to be thought of Blaise's joy in each one of these cases?

Ans. Blaise, in several cases, ought to regret his joy, if that joy was not spontaneous, but the result of fully deliberated act; in almost all the cases, he must be excused.

1. He sins grievously in rejoicing at the death of his brother, if it is for the death itself, though he does not do it through hate, but because he remains alone to inherit; for it is not permitted to rejoice at an evil happening to another, above all to a brother, on account of the advantage which will result from it. This is established by the XIIIth and XIVth propositions condemned by Innocent XI.*

* These propositions, condemned on the 2nd of March, 1779, are the following:

13.—"If it is done with moderation, one may, without sin, complain of the life and rejoice at the natural death of a person, to ask for it and to wish it with an inefficacious desire, not through hate for the person, but in view of a temporal advantage."

14.—"It is allowable to wish for the death of one's father; not in view of the harm he will experience, but in virtue of the advantage which will result from it, that is to say, some rich inheritance."

There was besides a proposition:

15.—"A son may lawfully rejoice for having, while drunk, killed his father, on account of the riches coming to him by inheritance."

This last monstrosity emanates from the Jesuit Fagundez (Vol. IX in Decalogum). The Jesuit Gobat, who accepts it, explains himself extensively on this subject.

Because he could not wish for the death of his brother for that reason, then he cannot rejoice at it. It would be otherwise if he did not rejoice at the death of his brother, but only at the inheritance which comes to him from it.

2. Blaise must be excused in the second case; because the motive which directs him is not a transgression of the principle of charity, thinking only of the good of his son and family. But he must not be excused for the joy he feels from that death on account of the relief which results at it for the family. This would be, in reality, contrary to the principle of charity. . . .

"As it is supposed that the parricide has been innocently committed by a lack of deliberation caused by drunkenness, and that there had been no premeditation; besides, that parricide has for effect the gaining of great riches, an effect which is good, or at least, certainly, not bad; it follows that the doctrine of F. Fagundez, which may seem paradoxical, is true in speculation, although dangerous in practice." (page 437)

Tambourin multiplies the species, and makes a more complete catalogue:

"May a son wish for the death of his father, . . . in order to enjoy his inheritance?

"May a mother wish for the death of her daughter, in order not to be obliged to feed and endow her?

"Can a priest wish for the death of his prelate in the hope of succeeding him, or to be delivered from that prelate who is contrary to him, and other such things?

"If you only desire or learn with joy of those events, viz. an inheritance, the end of your grief, a prelacy, etc., the answer is easy; because it is permitted to desire these things and to receive them; because you do not rejoice at the evil of others, but at the good which comes to you." (page 429.)

La Croix: "It is permitted to wish for the death of some one, or to rejoice at it, when a great good, even a temporal one, results from it to the public or to the Church."

Cardenas: "It is allowable to a son to rejoice at the inheritance which comes to him through the death of his father, without rejoicing at the death itself." (page 422.)

Casnedi: "I may wish for the death of my father, either as being for him an evil, and that is not permitted . . . or being advantageous to me, and then we must distinguish: firstly, I can rejoice as much at the good which comes to me through the death of my father as in my father's death itself, which is the cause of that great good; . . . secondly, I can rejoice fully at the good which comes through the death of my father, and not at his death which procures to me that good.

"The first manner is not permitted . . . but the second one is; because then I make an abstraction, but I rejoice only at the good.

"This doctrine must become familiar; because it is useful to all those who wish for some good which they can have only through the death of some one; as when it is a question of some profession or situations, in peace or in war, or some ecclesiastical or secular dignity." (page 438.)

Case XV.

On Drunkenness.

Gaudiosus, an inveterate drinker, remains for whole hours drinking with his comrades, and especially on Sunday.

But though his head feels heavy and he staggers, he does not lose his reason; and swears, blasphemes, and sings obscene songs.

Ques. Has Gaudiosus grievously sinned?

Ans. Theologians generally admit, that drunkenness is not a mortal sin if there is no voluntary and total loss of reason. Now, in principle, Gaudiosus is not culpable of mortal sin, although he drank more than the others; I say in principle; because he commits a grave sin when, in provoking others, he co-operates in their sin, in inducing them to lose their reason.

Case XVI.

On Drunkenness.

Gaudentius gets drunk on very little. Having many occasions, he is often drunk. Most of the time, when in such a state, he goes to sleep; but one day he grew furious, and broke a very precious crystal vase, belonging to Titus.

Ques. 1. Does Gaudentius sin gravely?

Ques. 2. Is he obliged to pay for the vase?

Ans. Question 1. — Gaudentius cannot be excused from a grave sin; because he knows by experience, that, with the company he frequents, and the little quantity that is necessary to

We see by these extracts and even by Gury's case, that the condemnation pronounced by Innocent XI has been easily evaded by the Jesuits.

But what is more shocking, is to see such an infamous doctrine preached to little children, in our XIXth century. Open the *Petit Catechisme of Marotte*, (fourth edition, 1870, page 181), and read:

"Ques. Is it allowable to wish for a bad action or to rejoice at it, on account of the advantage which ought to result?

"Ans. It is never allowable to wish for a bad action, nor to rejoice at it, whatever may be the advantage resulting from it; thus, a son cannot rejoice at the murder of his father on account of the rich inheritance which comes to him. But it is allowable to rejoice at an advantage, though it results from an evil; for instance, a son may, with pleasure, take possession of the inheritance which comes to him through the murder of his father."

make him drunk, he is liable to become mischievous. He ought either to have abstained totally, or have mixed a notable quantity of water with his wine, and shunned his habitual boon companions. It would be otherwise if he seldom got drunk and against his will.

Ans. Question 2. — But he cannot be made to pay for the damage; it is evident that he has not foreseen the harm he has caused. Then, this harm has been voluntary, neither in the act nor in the cause; there is no theological fault; and in conscience, he is not obliged to make a restitution.

Case XVII.

On Drunkenness.

Hypacus, a physician, every time he performs a difficult surgical operation, an amputation for instance, gives to his patient a large dose of intoxicating liquor, opium, or ether, to make him insensible.

Ques. What is to be thought of Hypacus?

Ans. According to St. Liguori, and the other theologians generally, Hypacus sins gravely in administering an intoxicating potion in order to procure insensibility; because in acting thus he seeks good from evil: now, we must never commit an evil deed even if good is to result from it. But, according to some, Hypacus does not sin, because he does not seek directly inebriety; the effect directly in view being insensibility, and the effect purely permitted the suppression of reason. Now, the suppression of reason for a short time and for a grave motive does not seem to be an intrinsic evil; and, in reality, as one uses opium and ether in such a case, one may also use wine.

Treatise on Virtues.

185. — Virtue is the habit of acting honestly, in other words, according to good order.

We distinguish virtues as:

1. Natural or supernatural, if we acquire and preserve them by our own natural strength or by supernatural grace.

2. Innate or acquired, if they are given by God or acquired by repeated struggles.

3. Theological or moral, if they are immediately related to God, or if they have honesty for their immediate object.

There are four moral and cardinal virtues: prudence, justice, fortitude, and temperance.

We shall speak here chiefly of theological virtues: faith, hope, and charity.

CHAPTER I.

Faith.

186. — Faith, in general, is acquiescence in the authority of a word. Relatively to our subject, and as a virtue so-called, it is an inspired supernatural disposition, which calls on our intellect to acquiese firmly in the truth revealed by God and proposed by the church, in virtue of the authority of the divine revelations.

ART. 1. — Necessity of faith. . . .

ART. 2. — Object of faith. . . .

ART. 3. — Vices opposed to faith. . . .

CHAPTER II.

Hope.

211. — Hope is a supernatural virtue, by which, according to the promise of God, we look for future happiness, and the means of attaining it.

CHAPTER III.

Charity.

217. — Charity is a virtue by which we cherish God as the sovereign Good, on account of himself, and our neighbor on account of God.

ART. I. — Love to God. . . .

ART. II. — Love to our neighbor.

Section I. Precept for the love of our neighbors.

223. — Ques. Is it contrary to charity, to wish for a temporal evil to another, or to rejoice at it, for a good end?

Ans. 1. No, if the order desired through charity is not violated; in other words, if it is done in view of a greater good or a lesser evil. It is then permitted: 1st, for the spiritual good of others; 2nd, for the spiritual or temporal common good; 3rd, for the good of a large number and of greater importance, as for the good of the family, or of the community.

2. Yes, when the order willed by charity is violated. Thus, a woman cannot wish for the death of her husband, because she is maltreated by him. . . .

225. — Ques. Can we wish for a public punishment for our enemy, and even ask for it?

Ans. Yes, in principle, provided that any sentiment of revenge be set aside; but it is dangerous in practice.

Ques. Must the offender ask pardon for the offence?

Ans. Yes, in principle, if there are no other means of reconciliation. Except the case in which the offender would be the superior of the offended; or if the offended deemed it prudent to pardon the offence. . . .

226. — . . . We must not, without examination, accuse of sin, especially of a grave sin, penitents who confess that they hate some one; because they often confound the *proper appelation for enmity* with hatred of *abomination*, or of *rank*, or of *failure*, where they feel but a natural and overmastering aversion: However, it is necessary to take care that the aversion for rank or for character does not degenerate gradually into hate for the person.

SECTION 2. Works of mercy, alms, and brotherly correction.

Brotherly correction: this is an admonition by which, in virtue of charity, one endeavors to prevent others from sinning. . . .

231. — Ques. Does the precept of brotherly correction oblige under grievous sin?

Ans. Yes, in principle. . . .

232. Ques. What order must we keep in brotherly correction?

Ans. 1st, To reprimand secretly; 2nd, Before witnesses, if the first admonition is not sufficient; 3rd, To report to a superior. . . . Sometimes, one can and must change this order. . . .

233. — In regular communities, colleges, seminaries etc., it is convenient that correction should be made by denunciation, either directly or by an intermediate agent.* School-fellows and comrades cannot be absolved if they do not consent to make such a denunciation, when it is a question of great damage to the community.

SECTION 3. Vices opposed to charity for our neighbors.

The principal are: hatred, envy, quarreling, scandal, and co-operation in the sins of others.

ART. I. — Scandal.

234. — Scandal is a speech, or an act scarcely honest, giving occasion for a spiritual fall. . . .

237. — Ques. Is it permitted to advise some one to commit a lesser evil, when he has resolved to commit a greater one?

Ans. Yes, more probably. . . .

* "When the sin of another is secret, we must warn the guilty one secretly. If he shows himself intractable, he must be censured in the presence of one or two prudent persons; if he perseveres in his sin, his superior must be warned. But it may happen that it is necessary to change this order, and immediately denounce the offender to the superior." —*Marotte.*

This is the theory of espionage between comrades which is the rule in Jesuit's establishments, and contributes so powerfully to degradation of character; it is known how tattlers are treated in our colleges.

The newspapers exposed recently to public indignation, an article of the regulations in the military school of Saint Cyr, which is evidently dictated by the Jesuitical spirit:

"The pupils of the first division are in duty bound to inform the authorities of any pupil of the second division, whose bearing, deeds, and gestures, when outside, might injure the good reputation of the school, for which all pupils are responsible."

Ques. Can we allow sin occasionally, in order to correct the guilty one?

Ans. Yes; because to permit it, is not to engage in it.

238. — Ques. Is it allowable for a just motive to create an occasion for sin?

Ans. Controversy.—The affirmative is more probable. . . .

Ques. What are we to think of the relations between the faithful and the Jews?

Ans. In order to guard safely the dignity of the Christian religion, and to avoid the peril of perversion, it has been decreed by the church: 1st, That Christians should not live with Jews; 2d, That they should not attend their feasts; 3d, That they should not have the same masters; 4th, That they should not eat of their unleavened bread; 5th, That Christian women should not suckle Jewish children. . . .

On bad books. — Of all kinds of scandal, none is more abominable than that resulting from impious and obscene books. It is an invention of the devil, the most efficacious of all, to precipitate crowds of souls into the bottomless pit of hell. It is an awful scourge, which infects not only a country or a generation, but diffuses itself everywhere, in all time, making numberless victims. Who could tell the frightful evils which have come out of them, as from a poisoned source, to assail religion,— evils which will be propagated and multiplied to the end of the world?

Let the ministers of God, preachers and confessors, multiply their efforts. Let them sacrifice themselves to oppose that torrent of iniquity, and snatch from the infernal abyss the souls in danger.

Permission to read, print, or publish books contrary to the Christian faith and manners, must never be given. . . .

241. — Ques. Must such books, if borrowed, be given back to their owners?

Ans. No; unless some great inconvenience is to be feared. This results from the principle we gave. There is a grave inconvenience in quarrels, blasphemies, hate, and other similar things, which are to be feared from the owner. A slight contrariety, or the fear of losing his friendship, is not, most of the time, a sufficient reason. . .

Art. II. — Co-operation.

248. — It is: 1. Mediate or immediate. . . .

2. Near or removed. . . .

3. Positive or negative. . . .

4. Formal or material. . . .

There is also co-operation direct or indirect, physical or moral. . . .

250. — Ques. Is a servant allowed to open the door of a house to a courtesan?

Ans. Controversy. St. Liguori concludes in the affirmative, if there is some other person who would do it. . . .

In cities. . . it is allowable to let a house to courtesans, if no other tenants are found, or if they could easily find some other house. . . .

251. — Ques. Can a servant harness a horse for his master who is setting out to commit a sin, and can he accompany him?

Ans. It does not appear to be forbidden to get the horse ready, because the servant no more co-operates in his master's sin than by opening the door to the courtesan. But he cannot accompany his master, unless in case of serious damage. . . . Or if he is not certain about the design of his master. . . .

Ques. Is a servant permitted to carry his master's love-letters to a concubine?

Ans. No; at least, not without a weighty reason. . . .

Ques. Is a servant permitted to carry gifts to a courtesan?

Ans. No; unless there is a very weighty reason.

256. — Ques. Are inn-keepers permitted to give newspapers to their customers, to read?

Ans. They cannot subscribe to papers which are evidently and ordinarily contrary to religion and good morals, even if they run the risk of losing their customers.

Cases of Conscience on Virtues.

Case VII.

Relation with Heretics.

Leocadie, a nun, a hospital nurse, where Catholic and heretic patients are received, is requested by Quirinus, a very sick Protestant, to send for a minister of his sect, in order to receive from him the consolations of religion.

Leocadie does not know if she must obey.

Ques. May Leocadie send for a Protestant minister?

Ans. No; it is evident that she cannot; that would be communication with heretics in a religious case, and co-operation also. Here is the decision of the Holy Congregation of the Inquisition on the 15th of March 1848:

"Venerable Father,

"D. N. humbly informs your Holiness that, in the city of M——, there is a hospital of which he is the chaplain, and where the patients are under the care of nuns. Others than Catholics are received, and often Protestant ministers are sent for. It is asked if nuns are permitted to bring in ministers of the false religion? Is it also allowable to call for a Protestant minister when some heretic is treated in the private house of a Catholic?"

15th of March, 1848.

In the General Congregation of the Roman, Universal and Holy Inquisition, deliberating in Council, in presence of Their Eminences and Reverences S. R. E. Cardinals, especially delegated by the Holy See in order to fight heresy all over the world: After having heard the reading of the above request, and the wish of the Doctors consulted being known, their Eminences and Reverend Lords have said: "According to what has been said, such a thing is not allowable," and added: "Let them keep a passive attitude."

Angelus Argenti.

S. Rom. and Univ. Inquisit. Secretarius.

Case XII.

Charity Towards our Neighbor. Maternal and Conjugal Love.

Calpurnie, the mother of a large family, wishes for the death of a new-born child, of another one five years old, deaf and dumb, and also of another, nine years old, an invalid, in order that they should enjoy happiness in heaven. She wishes also for the death of her daughter, not being able to marry on account of her poverty and homeliness, who if dead, would be prevented from sinning. She desires also the death of her husband, an old and sickly man always complaining. Sometimes, in a moment of passion, she would send her children to the devil; and an instant after, moved by piety, she would devote them to God and wish them dead. But she falls sick, and her husband, Culpurnius, runs to the nearest monastery and prays for the death of his wife.

Ques. 1.— Did Calpurnie sin in these divers cases, and how?

Ques. 2.— What is to be thought of her husband?

Ans. Question 1.— 1. Calpurnie has not sinned in her first wish about her three sons and daughter, because she is not influenced by passion, but by the thought of a better state for them. She did not sin against charity, or against the virtue of piety.

2. In wishing for the death of her husband, she sinned grievously against charity and piety; because her motive is a perverse one, and her wish is caused by annoyance, impatience, or hate for her husband.

3. She committed a grave sin in devoting her children to the devil, unless she acted through anger; or again, what often happens, not meaning seriously what she said. However, as the movement of passion is seen, and the imprecations heard by the children, it is difficult to avoid a grave scandal. But she did not sin in wishing that God would gather her family and place it in heaven, provided she was moved only by faith and piety.

Ans. Question 2.— It is evident that the husband has grievously sinned against charity and piety.

Case XIII.

On Dancing.

Lucile, foreseeing that she would soon be obliged to dance at her sister's wedding, and also at balls, public or private, when introduced into society by her father, asks her confessor if she is obliged to obey her father.

Ques.— What is the decision in Lucile's case?

Ans.— Lucile must be praised for her scrupulous and timid conscience; and also, because, seeing the peril, she comes to ask the advice of her confessor. I advise that good girl to seek for some means to avoid dancing; but I do not impose that obligation. If she cannot escape it, let her think, while dancing, of death and divine justice.

Treatise on the Precepts of the Decalogue.

I am the Lord thy God. . . . Thou shalt have no other gods before me. (Exodus xx. 2, 3).

PRECEPT I.

CHAPTER I.

Acts Relative to the Virtue of Religion.

Art. 1.— On Adoration.

Art. 2.— On Prayer.

CHAPTER II.

Vices Opposed to Religion.

Art. I.— On superstition.

263. — Superstition is a vice contrary to religion by its excess, and by which we render to God a worship we do not owe him, or to creatures a worship we owe only to God.

Section 1. — On Idolatry. . . .

Section 2. — Forbidden worship. . . .

265. — It is a superstition to address prayers to St. Bridget, or others, and expect from them an infallible effect. Notwithstanding, we must not blame, but praise, those who wear medals, pious images, or relics, with the hope of receiving divine help. . . .

Section 3. — On divination.

266. — This is the searching of sacred things with the help of the devil.

It is *expressed* if one invokes the devil expressly, and *implied* if that invocation consists only in forbidden practices.

We distinguish several kinds of divination, the principal are:

1. Judicial astrology, by the stars;
2. Augury, by the songs of birds;
3. Aruspicy, by their flight;
4. Aruspicy, by the entrails of animals;
5. Chiromancy, by the lines of the hand;
6. Geomancy, by the signs of the earth;
7. Presage, by chance;
8. Necromancy, by the invocation of the dead;
9. Oneiromancy, by dreams;
10. Sorcery, by spell;
11. Oracle, by idols;
12. Prophecy, by soothsayer or cards; . . .

270.—Ques. Is it possible to foretell the future by dreams?

Ans. No, generally; . . . because the dreams sent by God are very rare, and present signs easily distinguished from natural dreams or diabolical ones.

Ques. Is it permitted to use the divining rod? . . .

Ans. We must not quite condemn that means of discovering water and metals, provided the rod should move equally if we search for them or not; but we protest against any diabolical intervention, and exclude all spirit of superstition.

Section 4. — On magic and witchcraft.

271. — In its strict sense, magic is the art of wonder-working, which, though not supernatural, is above the strength of man, and can be obtained implicitly or explicitly only with the help of the devil who has been invoked.

Witchcraft is the art of doing injury with the intervention of the devil. There is an amorous witchcraft and an envenomed witchcraft. The first, the philter or love-charm, is a diabolical art consisting in creating a sensual love or a violent hate for some one. The second is the art of injuring by causing sickness, insanity, etc., etc.*

* Ques. What is magic?
Ans. It is the art of doing astonishing things above the power of man, and consequently by the intervention of Satan.

APPENDIX I. — Table turning. . . .

273. — Pious men, who had seen in turning tables a purely physical phenomena, have recognized in it, with no doubt whatever, an infernal divination.

274. — Is it possible to question marble or wooden tables and expect answers from them? Nobody is foolish enough to believe that; so people think, generally, that spirits are moving the tables, and they have been called spirit-rappers; now, they cannot be good spirits; it would be blasphemy to affirm that angels and saints enjoying an eternal happiness would intervene in such a childish game of men, obeying them and giving satisfaction to their insane curiosity. Moreover, it would be impious to affirm that God, who abominates divination and forbids it so severely, should permit the inhabitants of heaven to interpret them. Spirits of that sort then are bad spirits, cursed by God for eternity, and seeking to entrap men in their meshes. Now, shall we not refuse with indignation to entertain relations with those unclean spirits, to evoke them, or render to them a true worship? Is not this the crime of divination forbidden by God as abominable? *

APPENDIX II. — Animal magnetism.

279. — The Roman Curia, questioned on the use of magnetism in general, answered through the Congregation of the Holy Office on the 21st of April, 1841: The use of magnetism, as it is explained, is not permitted. . . .

APPENDIX III. — Consultation of Spirits, or Spiritualism.

282. — This is a new superstition, the worst of all, sent by hell for the destruction of souls. . . .

Ques. What is witchcraft?

Ans. It is magic aiming at injuring others by the intervention of the devil. It takes also the name of sorcery; because it consists in throwing spells, with the help of the devil, over our enemies.—*Petit Catechisme de Marotte.*

Here is what is thought in the 19th century, in face of the light of modern science.

* Ques. What is to be thought of turning and speaking tables?

Ans. The experiments on turning and speaking tables are nothing else than superstitious and diabolical practices.—*Petit Catechisme de Marotte*

It is clear that it is a diabolical consultation, a so-called divination, severely forbidden by the Church. Those who consult spirits or spiritualists, in order to diffuse more easily their pestilential error, have formed a sect, which grows from day to day in large cities. . . .

ART. II. Irreligion.

This is a particular lack of respect which addresses itself to God, either immediately, or through the medium of persons and sacred things. The principal kinds are: temptation relative to God, sacrilege, simony, and perjury.

SECTION I. Temptation relative to God.

283.—This is a word or an act by which one seeks to know if God is powerful, wise, merciful, or gifted with some other qualities. . . .

SECTION II. Sacrilege.

284.—This is a violation, or an unworthy treatment inflicted on a sacred thing. It is: 1, personal; 2, local; 3, real. . . .

285. — A personal sacrilege is committed: 1st. in laying violent hands on one of the clergy, or on a monk; 2nd. in luxuriously violating persons devoted to God, even by simple sensual contact; 3rd. in traducing ecclesiastics before a tribunal.*

SECTION III. Simony.

288.— Simony, so called from Simon the magician, is the desire which seeks to sell, or to buy a spiritual benefit for a temporal price. It is called, seeking will or deliberate will.

The canon laws recognize three sorts of temporal prizes: Gift of the hand; . . . Gift of the tongue; . . . (praises, etc.,) Gift of obsequiousness. . . .

Simony is subdivided into mental; . . . conventional; . . . actual. . . .

* St. Liguori has imagined a very ingenious species which makes it doubly sacrilegious: "If a priest in administering sacraments or in the act of saying mass, when clothed in sacred vestments or leaving the altar, pollutes himself voluntarily, or delights in venereal pleasures, he commits a sacrilege" (Book III., No. 363).

With a little imagination, one could invent a triple sacrilege. This is a pretty problem, that I present to any one concerned in the matter.

We distinguish the simony of *divine rights* (indulgences, sacraments) . . . and that of *ecclesiastical rights* (benefices). . . .

289. — Simony is a very grave sin.* It comprehends no trifling reasons in natural and divine rights; . . . in ecclesiastical rights it may.

290. — Ques. Is it simony, to give temporal things to conciliate a superior in view of obtaining a favor?

Ans. No, if the principal intention is to give it gratuitously . . .

Ques. Is there simony if one exercises sacred functions especially in view of his salary?

Ans. No, at least according to the probable opinion; because one does not receive the salary as the price of the sacred functions, but as something due to a person working for the good of others. . .

291.— Is there simony in giving or receiving something for entering a religious Order?

Ans. It is evident that a poor convent is permitted to exact something for the feeding, etc., of the new comer; because then one does

* Do not be frightened by such a show of severe principles. Already the exceptions indicated by Gury teach us, that there are ways and means of compromising matters with Heaven. The ancient Jesuits, even in proclaiming the same theoretical horror, expressed themselves more clearly yet:

Emm. Sa: "It is not simony to give something to a man in order to gain his friendship, by means of which a benefice will be obtained; neither to give a benefice secondarily, and not principally, *for personal good*; . . . nor with the agreed condition that the beneficiary shall resign it when he shall have a better one; nor with this other condition, that he will remit a debt not valid in justice; nor with the equally express condition, but nevertheless without a contract, that he will give it to some one else." (page 148.)

To let: "Any one promising money in order to receive a benefice, but whose promise is insincere, taking the resolution not to keep it, if he thus obtains the benefice, is he guilty of simony? No; because it is the intention which determines the nature of exterior acts. This is the opinion of Lessius, Suarez, de Valence, Fabri, Laymann, etc., etc."

Grégoire de Valence: "It is not simony to render some service to a bishop, or to present him with some temporal gifts, in the hope of obtaining from him, in gratitude, some spiritual benefice."

Filliucius: "If some sacred thing was given for an immodest pleasure and this as the price of it, and not simply out of gratitude or kindness, then this would be simony and sacrilege; as for instance, if the collection, election, or presentation of a benefice was the price of lewdness committed with the beneficiary's sister. I have said not out of gratitude; because in this case there would be neither sacrilege nor simony, but only a sort of irreverence in rewarding a shameful and profane action by a thing sacred and dedicated to God." (page 151)

not exchange a spiritual thing for a temporal one; and besides, equity demands something, so that the convent shall not be ruined by expenses. . . .

It is evident that nuns are permitted to exact a dowry from the new comer, as it is established everywhere by custom. . . .

292.— Ques. Is there simony when a priest offers a mass to a layman for a stake, whilst his companion exposes a material stake?

Ans. No, in principle; because a spiritual thing is not balanced by a temporal one in this manner; it is just as when a mass is said for a specified price; it is only offering a spiritual payment instead of a temporal one. . . .

Ques. Is there simony when a priest exacts for a mass a price above the habitual tariff, or that fixed by the bishop?

Ans. No, in conscience and before God, unless there is a thought of simony; as long as he has a right to exact a renumeration, no exchange of a spiritual thing for a temporal one is intended. . . .

295.—One is not guilty of simony when, through gratitude he gives a temporal benefit for a spiritual benefit received, and *vice versa*. Thus, there would be no sin on the part of a chaplain who willingly puts himself at the service of a bishop out of gratitude for former kindness; such things are not looked upon as a price. Moreover, it is honorable and praiseworthy to show one's self grateful for past favors. . . .

Ques. Is it necessary to restore the price of simony which has been received for a spiritual thing?

Ans. If the crime of simony only has been committed, and if justice has not been violated, there is no obligation to pay back before you are condemned to do it by a judgment; unless the price is above the estimation of the temporal good given to the other in exchange. . . .

Cases on the First Precept of the Decalogue.

Case IX.

On Divination.

Lazare has heard that a ring or a stone hung to a thread, held between the thumb and the index in such a way as to strike a glass, indicates the hour. Drawn by curiosity, he was going to test it; when some one told him that it is not allowable, because it is a superstitious practice. He asks for the advice of his confessor.

Ques. Can he make the experiment? Is it a superstitious practice?

Ans. Lazare must not make the experiment, as it is evidently a superstitious practice. This is no natural cause for indicating the hour, since such indications proceed neither from pulsation, nor from the imagination, nor from the attraction of the stars.

Case X.

Magic and Witchcraft.

Sabellus, betrothed to Sigolena, is on the point of marrying her. But Dafrosa, the step-mother of Sigolena, and a fast woman, hears of it, and does all she can to prevent it, but in vain. Then, in anger, she said to Sigolena: "Let my curse fall upon thy head!" After the marriage, Sabellus conceives such an aversion for his wife that he cannot see her without disgust. Sigolena suspecting Dafrosa of having thrown a spell over her, complains to Dafrosa of her husband's aversion, and asks if she knows a remedy, "Yes," answers Dafrosa, "but I will not give it thee, until I receive one hundred pounds."

Ques. Can we reasonably conjecture that in this case there is intervention of magic, or witchcraft?

Ans. Yes, this seems to be the result of all the circumstances. Assuredly, a natural aversion may come between man and wife, as we see many examples of it; but it does not come, without a known cause, with such rapidity and violence. Add to this the threats of Dafrosa, a courtesan, and the remedy she claims to have at her disposal, if she is paid for it. In the Scriptures, we see there were magicians, witches, and sorcerers; this is also established in different passages of the canon laws, with abundant proofs. So we cannot refuse to have faith in all the diabolical facts of this nature, in general and in particular, when there are unquestionable indications of it. In all ancient times there have always been perverse men, selling themselves to the devil, in order to have his intervention in revenging themselves on others in a strange and frightful manner. Why, in so corrupt a time as this, should there not be also magicians and sorcerers? But we must avoid believing too easily everything that is related: most of these are intentions, and the people, too credulous, often attribute to witchcraft the calamities and plagues which result from natural causes.

Case XII.

Table Turning.

Camille, mother of a family, drawn by feminine curiosity, has often, of her own free-will, attended meetings in which the attendants, forming a circular chain by means of a light contact at the extremity of the fingers, make tables turn, stop them at will, make them walk, go back, answer by conventional signs, and even, oh stupefaction! make them write with a pencil fixed to one of the legs, all the answers asked of them. . . .

Ques. What must we think of these practices?

Ans. Assuredly, we must attribute to the devil everything that is done in the form of divination, all that is relative to divination; and those questions asked of tables on things secret or future, and the answers received by signs or characters. In reality, why put questions to a wooden or marble table, and expect answers? You are not foolish enough for that. You believe, then, that you are in communication with an intelligent being, or some spirit, who

can move an inert table. Now, such beings cannot be good. Who would dare to affirm that it is God himself, or an angel sent by Him, who intervenes in these foolish games of men, and who always zealously yields to their vain curiosities and impious notions? It would be a horrible blasphemy. And it could not be either from souls expiating in Purgatory that we can expect the knowledge of sacred things; because they can do it only according to God's will. Of course, it is the devil himself who is implicitly invoked; it is he who is worshipped, in spite of God's prohibition.

Case XIII.

Animal Magnetism.

There are three degrees in the effects of magnetism: 1. The state of sleep, which consists only in the torpor of the senses; 2. The state of somnambulism, in which, in spite of the torpor of the senses, one sees, one speaks, one answers; 3. The marvelous knowledge of one's position and the requisite remedies necessary to it, as well as the sight of things which happen far from there. This granted:

1.—The third degree must certainly be condemned as forbidden, and full of superstition. It is nothing else, in fact, than an evident divination, which we must abominate in all cases.

2.—The second degree, the somnambulism, can in no way be considered as natural, and must be attributed to the intervention of the devil. Because nobody can see with his eyes shut. No one, in a state of deep sleep, can answer clearly and distinctly any question whatever.

3.—The first degree, if we consider only the state of sleep, could be looked upon as natural; but this cannot be admitted in any way. . . .

Then the first degree must be called superstitious, and must certainly be prohibited.

Case XVI.

On Sacrilege.

Renatus went to church on a feast day, not to worship God, but to meet and see his betrothed. During all the divine service,

he looked at her with unchaste desires; he allowed his mind to be filled with depraved thoughts, and did nothing else, but *de se toucher et polluer.** The mass being over, he invited the young girl, by signs, to abandon herself to him (*copulam habendam*) in some other place.

Ques. 1.— Has he committed one or several sacrileges?

Ques. 2.— Has the church been profaned?

Ans. Question 1.— He has not committed any sacrilege by his obscene thoughts . . . neither by his immodest looks . . . nor by the signs to his betrothed.

But he has committed a sacrilege by polluting himself, even secretly, and this as often as it took place; . . . and also, at least with probability, because of his self-contact.

Ans. Question 2.— The church has not been profaned by Renatus' pollution, though he has committed a sacrilege; because the pollution was a secret one.

* The vilest phrases will remain untranslated.

Second Precept of the Decalogue.

"Thou shalt not take the name of the Lord thy God in vain."
Exodus xx. 7.

CHAPTER I.

Vain Usurpation of the Name of God, and Blasphemy.

ART. I.— Vain usurpation of God's holy name.

296.— It is a vain usurpation of the name of God, when it is pronounced without reasonable cause, and without the respect it deserves.

ART. II.— Blasphemy.

299.— Blasphemy is a word, or an expression, insulting to God. . . .

CHAPTER II.

Oaths.

306.— An oath is an invocation of the divine Name to attest the truth. . . .

ART. I.— The conditions of an oath.

Section 1.— Conditions required for the validity of an oath.

307.— There are two of them: 1st, The intention, at least virtual, of taking an oath; because without this intention there can be no valid oath. 2d, A formula for the oath; in other words, a sign by which we express sufficiently, either explicitly or implicitly, that we take God as our witness. . . .

ART. II.— The obligation of the oath.

312.— That obligation must be strictly interpreted, and must conform itself to the nature of the act or of the contract to which it is added, as well as to all their conditions.

The first reason is, that the one who gives his oath, is regarded as wishing to be bound the least possible; the second reason is, that the oath does not change the nature of the act, but only adds to it a religious obligation; and, consequently, must be under the same conditions and be bound by the same limits. . . .

315.— One is not bound by an oath given in a promise of marriage to a young lady, rich, healthy, a virgin, and of good reputation, if she falls into poverty, sickness, infamy, or fornication; because a simple promise does not oblige in this case.* . . .

APPENDIX ON ADJURATION.

316. Adjuring is a supplication, made with authority and prayer in the name of God, of the saints, or of a sacred thing, in order to induce some one to do or avoid something. . . .

318. Ques. Concerning what may we question the devil?

Ans.— Concerning everything related to his expulsion; for instance, on the time and cause of his taking possession, etc. . . .

Ques. What are the signs of a true possession by the devil?

Ans. The principal are: 1. Speaking a language not known before the possession; 2. Divulging secret and strange things not known by men; 3. Obeying the purely internal orders of the priest; 4. Experiencing greater suffering or greater tranquility, induced by the devil, when ignorantly touching sacred things. . . .

In general, we must not believe easily that some one is possessed; because true possessions very seldom happen in our time. . . .

CHAPTER III.

Vows.

319.—A vow is a deliberate promise made to God concerning a a better welfare.

*The promissory oath does not oblige: 1st, when it cannot be kept without incurring grave damages, etc. (*Marotte*).

Vows are:

1. Solemn or simple. . . .
2. Selfish or real. . . .
3. Temporary or perpetual. . . .

ART. I.—Conditions required for vows.

There are two principal ones included in the definition: 1, a true intention; 2, a qualified motive.

SECTION I. The intention required by the vow. . . .

322.—Ques. Is one held by a vow if he doubts that he has pronounced a vow or only a simple proposition; or, that there has been sufficient deliberation?

Ans.—1. No; in consequence of what has been said on the subject of probability. But if, when promising, he believed that it would be a sin not to fulfil the vow, it is to be judged that the vow is valid.

Ans.—2. No, for the same reason; if we have positive and serious doubts about a sufficient deliberation. Most of the time, the question must be decided after the examination of the circumstances. . . .

SECTION II. Motive for the vow.

324.—Ques. Is a vow valid, if it has a perverse aim, or evil conditions?

Ans. 1.—No, if the bad aim is attached to the vow; for instance, if you vow to give alms in order to steal successfully. . . .

Ans. 2.—Yes, if when the vow is made, one is influenced by good sentiments; it is valid then, though having a bad cause or evil conditions: for instance, to vow to give alms if one is not caught stealing. Because, if to steal is an evil, not to be caught is not one, but certainly a gift of God; now, the vow does not bear upon evil, but on good, insomuch it is good by itself. . . .

ART. II. Obligation of the vow. . . .

ART. III. Cessation of the vow.

329.—The obligation of the vow may cease:

1. For intrinsic causes, for instance, by the cessation of the aim or of the motive, the change of the motive, a moral or physical impossibility.

2. For extrinsic causes, by annulment, dispensation or change. . . .

SECTION I. Annulment of the vow. . . .

SECTION II. Dispensation from the vow. . . .

SECTION III. Change of vow. . . .

Cases on the Second Precept of the Decalogue.

Case VII.

The Value of Vows.

Gervais, a youth, vowed: 1st, to preserve a perpetual chastity, which he thought easy to do, but later difficult to keep; 2d, not to eat the heads of animals, in honor of St. John the Baptist, the beheaded. . . .

Ques. Are these vows valid?

Ans. Yes, for the first. . . . No, for the second.

Case VIII.

The Value of Vows.

Veronica, mother of a family, observing with grief that her daughter Martine is pregnant by Titus, and fearing dishonor for the family, vows before God and the holy Virgin to give a hundred pieces of gold to the church if her daughter dies before giving birth to the child.

Ques. Is the vow valid?

Ans. Though valid as to the object of the vow, it is illicit as to the end. . . . Indeed, though one cannot condemn a mother who, to avoid such dishonor, wishes for God to take away her daughter; however, as there is here an eternal injury for her child, and as the desire of the mother is not subject to the condition of her eternal salvation, but is absolute, that desire is illicit.

Third Precept of the Decalogue.

"Remember the Sabbath day, to keep it holy." Exodus xx. 8.

CHAPTER I.

What is Commanded on Feast Days.

ART. I. What is to be done, generally, on Feast Days.

338.— All the faithful having reached the age of reason, are obliged, under penalty of a grave sin, to attend mass every Sunday and feast day, unless there should be a legitimate reason. . . .

ART. II. The hearing of mass in particular.

341.— . . . One attends mass, according to the more probable opinion, if one is in a house in the neighborhood from which one can see, through the door or window, the altar or the attendants, provided a little space only separates the house from the church. It would be otherwise if there was a large space or square. . . .

344.— In order to hear mass properly, attention, at least external, is required.

Some internal attention is also necessary, at least, the desire to hear mass. . . .

One of the three following internal attentions is sufficient: attention to the words and acts of the priest; to the meaning of the words and of the mysteries; to God himself. . . .

347 — . . . Mass is sufficiently listened to, if one is involuntarily diverted, even during the whole ceremony; unless one should be so much absorbed by other thoughts as to lend no attention whatever. . . .

The one who goes to sleep from time to time does not commit a grave sin, if once in a while his attention is called to what happens around him.

Those who are diverted, do not commit a grave sin, if they lend a virtual attention. That is to say, if, having had in the beginning the intention of listening, they have been disturbed during all the time of the mass, without changing their first intention. . . .

353.—Ques. Can the realization of a notable gain be alleged as a sufficient excuse for non-attendance at mass?

Ans. Yes, according to the probable opinion, because the precepts of the Church do not oblige us to suffer a serious loss, as has been said in the Treatise on Laws, No. 100, but such gain must be extraordinary.

CHAPTER II.

Things Forbidden on Sundays and Feast Days.

ART. 1. Forbidden work on Feast Days.

355.—In principle, all manual labor (*servilia*) properly so called, is forbidden to the faithful. . . .

But liberal works, common works, and the manual labors necessary to every day life, are permitted. . . .

357.—Ques. Is it permitted: 1, to write; 2, to transcribe anything, on a feast day?

Ans. 1. Yes, because it is a liberal art.

Ans. 2. Yes, according to the more probable opinion.

It is permitted then to draw, to copy music, to correct books. . . .

Ques. Is it permitted: 1, to sculpture; 2, to paint?

Ans. 1. No; sculpture is generally classified as a mechanical art.

Ans. 2. For painting, controversy. . . .

358.—Ques. Are fishing and hunting permitted?

Ans. Yes, because they are not manual works, provided no great noise, bustle, and great preparations are made. . . .

Ques. What is the serious motive for work done on a fast day?

Ans. According to many, if it is a purely manual work, two hours are sufficient; if it is scarcely manual, three hours. . . .

Ques. Is it a grave sin to order one's servants to work each one one hour on a feast day?

Ans. No, in principle, and according to the more probable opinion, whether the servants work together, or one after the other; because their works do not form a totality, but they sin only venially each one in particular; then the master commits but a venial sin in ordering them to do a work forbidden under venial sin.

ART. II. Causes for which salaried works are permitted on feast days. . . .

Cases on the Third Precept of the Decalogue.

They are of special order, and not interesting, except as indicating the cunning used by parishioners to deceive their pastors, or elude the rules.

Fourth Precept of the Decalogue.

"Honor thy father and thy mother." Exodus xx. 12.

That precept aims primarily and in a direct manner at the obligations of children towards their parents; and secondarily, in an implicit manner, at the obligations of parents towards their children; as well as at the reciprocal obligations of other superiors and inferiors.

CHAPTER I.

Obligations of Children Towards their Parents.

363.— Children are bound towards their parents by wholly special obligations. They have their duties to fulfil; to love, respect, and obey. . . .

Section I. Love.*

* Ques. In what consists the assistance which children owe to their parents in their spiritual needs?

Ans. It consists: 1, in respectfully recalling to them the truths of the faith, the fear of God, and love and zeal for religious duties, when they see them indifferent to their salvation; 2, to warn them of their state when they are dangerously sick, to exhort them to receive the sacraments, and take care that they shall be administered at a propitious time, and before they are at the point of death.— *Petit Catechisme de Marotte.*

One is astonished and indignant at hearing of so many odious scenes at death-beds.

We must, however, recognize, that in Gury no trace is found of the infamous doctrine resumed by Escobar in the following terms: "A son is and is not obliged to feed an infidel father who is in the greatest necessity, if the latter tries to induce him to abandon the faith."

"He is absolutely obliged to it. . . .

"He is not at all obliged to it. . . .

"This last sentiment must be held absolutely; because Catholic children are obliged to denounce their fathers or relations guilty of heresy, . . . even should they know that their fathers ought to be delivered to the flames, according to the teachings of Tolet. . . . Then . . . they may refuse them nourishment, and even let them die of hunger. Fagundez . . . adds, that they may even kill them; keeping, however, the

SECTION II. Respect. . . .

SECTION III. Obedience.

867.— Children must obey their parents in all lawful and honest things relative to them, so long as they are in their power. . . . But in bad things, children neither must nor can obey; this is evident by natural right.

869.— Ques. Are children obliged to obey their parents in the choice of a profession?

Ans. No, in principle: because every man in view of sure means of drawing himself towards God, his highest aim, or in order to regulate his life fully and freely for such an end, is quite independent of others. So parents sin gravely by forcing their children directly, or even indirectly, to choose a profession, either monastic, ecclesiastical, or conjugal; and also, if without any just motive, they prevent them from following one of those profession.

I have said in principle, because it would be otherwise if, for weighty or reasonable causes, the parents were opposing the will of their children; for instance, if, being in poverty, they were obliged to have recourse to them, the children not being able to succor their parents without remaining with them.

Ques. Are children permitted to enter religious orders in spite of their parents?

Ans. Yes, in principle; moreover, the child being attracted by vocation to a religious profession, and believing that he will be unjustly opposed by his parents, will act more wisely if he hides his intentions from them, and obeys the Divine will. However, this advice must not be given to minors when it is not an urgent case, or when one is not sure of his vocation. In France especially, good care must be taken not to advise minors thus, because the parents, with the help of the secular power, can take them from any institution, and carry them back home. . . .

moderation proper to a legitimate defence, as with enemies violating the rights of humanity, if they want to force their children to abandon the true faith; but nevertheless, they must not bind them to make them die of hunger." (page 436.)

CHAPTER II.

Obligations of Parents towards their Children.

They owe them love and education.

Section I. Love. . . .

Section II. Education.

It must be material and spiritual.

372.— Material education requires a triple foresight on the part of parents: for the life, for nourishment, and for profession. . . .

374.— Parents must, above all, procure spiritual education for their children; because man, besides his material body, in common with other animals, received from God a soul reasonable and noble, created in the image of divinity; he was born to draw nearer to God through time and eternity. . . .

This education requires: 1, doctrine; 2, correction; 3, example. . . .

CHAPTER III.

Conjugal Obligations.

378.— Married people owe each other reciprocally:

1. Mutual affection. . . .
2. Conjugal society and cohabitation. . . .
3. Nourishment, and what is necessary for an honorable position. . . .
4. Conjugal duty, when it is seriously asked for, there being no reason to refuse. . . .

379.— The husband's duty is particularly:

To see that his wife fulfils her religious duties, and follows the precepts of the divine law and of the law of the church; because he is the head and the chief of the family, and so must attend to the good direction of his wife and other members of the family.

To punish his wife when she commits a fault, when it is necessary to correct her and prevent a scandal. . . .

381.— . . . In the beginning he must gently reprove her, in

order to correct her; or, if that is of no effect, to have recourse to more severe punishments. . . .

The confessor must not immediately believe a woman who complains of her husband, because women are habitually given to lying. . . .

CHAPTER IV.

Obligations of other Superiors and Inferiors.

ART. I. Obligations of masters and servants.

Section I. Master's obligations.

382.— Masters must treat their servants well; instruct, correct and pay them sufficiently. . . .

ART. II. Obligations of masters and pupils. . . .

ART. III. Obedience and respect towards temporal authority. . . .

Cases on the Fourth Precept of the Decalogue.

Case III.

The Duties of Sons.

1. Agatha, a young girl born of honorable parents, is asked in marriage by a noble and brave soldier, richer in qualities than in temporal goods, and she accepts his proposal. But her father opposes it, and protests that he never will give his consent to the marriage of his daughter with that wandering soldier, exposed to a thousand perils. But the indignation of that excellent father is of no avail with Agatha. On the contrary, after having asked her father's consent in the legal way several times in vain, she contracts the marriage in spite of him.

2. Eulalie, after deep reflections, decides to enter a convent. Her father refuses his consent and a dowry. But Eulalie, distinguished by her intellectual and moral qualities, obtains the privilege to be admitted free, and without warning her father, she takes refuge in the convent.

Ques. 1. Must children obey their parents, when it is a question of vocation?

Ques. 2. What is to be thought of Agatha and Eulalia?

Ans. Question 1.—No, in principle; because a man is free to choose his own profession. Parents, then, sin gravely by using constraint to turn children away from their vocation; they may, however, oppose them when there are just reasons for it.

Ans. to Ques. 2.—1. In regard to Agatha, it is a difficult question. However, it would be well to advise her to obey her father, or renew her supplications. If these two means were not successful, she could not be accused of mortal sin in marrying an honorable man.

Moreover, her father commits a great fault in refusing, without reasonable motives, his consent to the marriage; it would have

been a more grievous sin if she had become pregnant in her relations with the soldier.

2. We must excuse Eulalie; because, having a vocation for it, she has embraced the religious profession only after sufficient deliberation, and after having respectfully asked for the consent of her parents. She must be condemned for having secretly run away, seeing no other way to obey the divine will. But the father has committed a grave sin by unjustly opposing her vocation and disappointing his daughter of her dowry.

Case VI.

The Duties of Parents.

Mathurin, a godless father of a family, takes suitable care of his sons, in a temporal point of view, but seems very unconcerned about their education. The oldest, almost deprived of Christian instruction, he employs in his own trade; the second is apprenticed in a shop to learn a trade in company with dissolute young men; the third is sent to a college very little recommended for its teaching of morals and the faith.

Ques. What is to be thought of Mathurin?

Ans. Mathurin has committed a mortal sin about each one of his sons. . . . Alas! How many such men we see in our days!

Case VII.

The Duties of Masters.

Titius, careless of his own salvation, is unconcerned about the morals of his servants. . . .

They do not go to mass on Sunday and at Easter-time; they neither go to confession, nor to communion. Titius sees all that, and does not reprove them.

Ques. What is to be said of Titius?

Ans. Titius is a bad, detestable master, and has committed a sin in each one of these cases. . . . Alas! How many masters in our days are just like Titius!

Fifth Precept of the Decalogue.

"Thou shalt not kill." Exodus xx. 13.

CHAPTER I.

Suicide.

389.—One is not permitted to kill himself directly; that is to say, with intention, without the intervention of divine authority. . . .

390.—Ques. Ought a virgin to prefer death to dishonor?

A. No, according to the probable opinion, provided her will protests, and that there is no peril in consent, because that *permission* is not formal co-operation, but only material, to the sin of another, and there is a just motive for permission, the danger of death. But this practice must not be advised when one may prudently fear the peril of consent. . . .

391.— . . . . A virgin is not obliged to undergo an operation at the hands of a doctor, even in danger of death, if through modesty she looks upon it as very grave, and has more horror of it than of death itself. . . . .

CHAPTER II.

Murder.

ART.—The murder of a guilty person, or of a criminal.

394.—Ques. Is it allowable to kill a tyrant? *

Ans. Upon the whole, No.

*Here is one of the few questions on which Jesuits have completely changed their opinion. Formerly there was no doubt in their mind as to the legitimacy of killing a tyrant or usurper. It is interesting to notice that this change took place at the time of the first Empire, when they disowned their former doctrine. And this doctrine was not left as a theoretical teaching. Practically, they sustained their assertion. Listen to Mariana, speaking of the murderer of Henry III., a legitimate king:

ART. II.—Murder of an unjust aggressor.

395.—May one defend his own life, even by killing an unjust aggressor? *

396.—Ques. Is it permitted to kill an unjust aggressor for the preservation of one's limbs?

Ans. Yes, according to the common opinion.†

Ques. Is it permitted to kill one who steals considerable property, if there is no other way of keeping it?

"Jacques Clement, a Dominican, born in Serbonne, a little village of Autumois, was studying theology in a college of his Order, when, instructed by the theologians that it was permitted to kill a tyrant, he mortally wounded the king, striking him in the stomach with a poisoned knife he kept hidden in his hand. A bold and memorable action. . . .

"The murder of the king gave him a world-wide reputation. . . .

"Thus perished Jacques Clement at 24 years of age, a young man of simple character and weak constitution; but a great virtue sustained his strength and his courage." (p. 452.)

* Theologians battled a great deal on this point, especially when the murderer was a priest or a monk. We shall not speak of these quarrels: legitimate defense in a case of actual necessity, has been justly admitted by our Code (Art. 328); but the Jesuitical spirit has placed the application very far from the principle.

Valère Reginald sets down the following case: "You bear false witness against me, and a sentence of death will result, and I cannot escape any other way, I am permitted to kill you." (p. 399.)

Lessius: "You have resolved to arm your servant or a murderer to kill me; if I have no other hope of escaping death than by anticipating your intention, I am permitted to do it, let the danger be present . . . or far off. . . ." (p. 401.)

De Lugo: "Can you kill one who, by calumnies and false witness, causes you to be sentenced by the judge?

"The affirmative is probable enough." (p. 415.)

Escobar: "It is quite allowable to kill one bearing false against you, if such act compromises your life or your honor. . . . It may be done also if the false witness has temporal good in view. (p. 416.)

"One may secretly kill a calumniator, if there are no other means of warding off the peril." (p. 419.)

Busembaum adds: "Every time that some one has the right to kill another, according to what his been said on the question, some one else can do it for him and in his place, seeing that charity allows it." (p. 441.)

† Our penal laws are more severe. But we shall not insist. Only it is marvelous to see what consequences the Jesuits have drawn for this dangerous principle.

Henriques, for instance, supplied the ingenious case following: "If an adulterer, even a priest, well aware of the danger, has called at the adulteress' house, and, surprised by the husband, he kills the latter to save his own life and limbs, it does not seem that he incurs irregularity." (p. 396.)

Ans. Yes, at least more probably. Every one has the right to keep considerable property for his own enjoyment.*

398.—Ques. Is a woman permitted to kill the one who makes an attempt on her modesty?

Ans. Yes, according to the more probable opinion; because it is a property more precious than riches; then, if it is allowable to kill to defend our property, there is more reason for it when it is to defend modesty.

399.—A young girl is not permitted to kill, after the crime, the one who attempted to destroy her honor. She may, however, strike him, and treat him with the greatest harshness; because, in not showing her perseverance and repugnancy in this way, the guilty man would not go away, or might be induced to repeat the crime.

ART. III. Murder of an innocent person.

400.—1. It is never allowable to kill directly an innocent person, by private or public authority, even in view of the common good; because it is an intrinsically guilty action, positively forbidden by the divine law.

2. It is allowable, for a grave reason, to do an action good in itself, from which, against our intention, results the death of an innocent person.†

* This is more serious, and quite contrary to the doctrine of our penal Code.

The Jesuits had gone very far in this, they having said that one can regularly kill a thief to save a crown; a proposition rightly condemned by Innocent XI.

De Lugo, a cardinal, wants the stolen sum to be at least one ducat, and that there should be no violence. (p. 422.) But most of them take refuge in appreciations vaguely formulated on this point.

Marotte does not hesitate to preach, in his *Petit Catechisme*, the Jesuitical doctrine, little disturbed about its unlawfulness.

"Ques. Can we kill a thief to save the property he tries to take away from us?"

"Ans. No, we are not permitted to kill a thief to save temporal property, inferior to the life of man; but if the thief tries to take away property of a very considerable value, its owner would have the right to resist him by violence, even to striking and wounding him."

† It is, in fact, Escobar's doctrine of saying: "The murder of an innocent person is absolutely forbidden, unless in some case it should be necessary for the good of the Republic."

Marotte does not fear to offer it to the meditation of little children.

3. One is not guilty of homicide when, even without motive, but acting carefully, one does an action, not causing death by itself, but from which results homicide *by accident*, because that homicide is quite fortuitous and involuntary. . . .

Abortion.

403.— . . . In no way can physicians be excused from homicide, who, in order to save the mother in childbirth, being in danger of death, as well as the child, have recourse to cephalotomy or embryoctony; in other words, by the help of forceps, to crush the child's cranium in the mother's womb, and then take out the dead fœtus. . . .*

CHAPTER III.

Dueling.†

Dueling is never permitted by private authority. . . .

405.—One cannot accept a duel, even to revenge an ignominious offence. . . .

A soldier cannot accept a duel, even if his refusal leads to his losing a commission necessary for the support of his family.

It is not allowable to engage in a duel on condition that the fight will cease at the first blood drawn, or after a determined number of wounds. . . .

Ques. "Is it sometimes permitted to kill an innocent person?"
Ans. "It is never permitted to kill, directly, an innocent person, even in view of public interest: but one can, in a grave and urgent case, do an action good in itself, although liable to cause the death of one or several innocent persons, provided the one who does the action should have nothing else in view than the good which will result from it, and does what is possible to remove the bad effect dreaded."—*Petit Catechisme.*

* "It is forbidden, under penalty of a very grave sin, to surgeons and midwives, to cause the death of a child in his mother's womb, in order to deliver the mother from a dangerous situation, unavoidable without that action." (*Marotte.*)

† "Of all kinds of homicides, dueling is the most criminal." (*Marotte.*)
The horror of dueling was so great with the Jesuits, that we read in Navarre, Sanchez, Escobar: "One is *obliged* to refuse the duel, if one can secretly kill the calumniator; because then, one does not expose one's self to loss of life, and the other is prevented thereby from committing a new sin in accepting the duel or offering it." (p. 419).
This has not prevented the Jesuits from having, in all times, and even to-day, bravos and bullies in their employ.

CHAPTER IV.

War.

407.—War is the strife of a multitude of men with another foreign multitude, to avenge or defend the State. . . .

408.—Ques. . . . May the soldiers fight, if they doubt the justice of the war?

Ans. If it is a question of a soldier not yet enlisted, he must inform himself about it, and, if he doubts, he cannot enlist; because no one must aid in the despoiling of others, if he is not sure that the possession has been unjustly acquired. . . .

Q ies. Can a victor kill the innocent, as well as the guilty?

Ans. The guilty, that is to say, the soldiers who have fought, can sometimes be killed, if it is necessary for the establishment of peace, for security, or to avenge an injustice, unless they should have surrendered with the condition of having their lives spared. . . . .

As for the innocent women, old men, foreigners, priests, monks, etc.,—they can not be killed directly, unless it should be proved that they co-operated in the war. But they can be killed indirectly, before the end of the fight, if they are mixed with the guilty, and in such a way that, if they were spared, soldiers could escape.

409.—Soldiers cannot kill the enemy in an unjust war, even in self-defence. If they cannot run away, they are to take care not to strike the enemy; because they are the unjust aggressors, and in one cause there cannot be two contrary right. . . .

It is sometimes permitted to pillage a captured city, but only for very weighty reasons.

Cases on the Fifth Precept of the Decalogue.

Case III.

Admirable Expedient of a Virgin.

Eulalie, a pious virgin, very careful of her chastity, being pressed by a soldier, and threatened with lust without means of escape, spoke thus to her would-be seducer: "Listen, and I will teach you a marvelous thing." He desisted. "Here it is; spare me, and I will tell you a way to risk nothing in battle. See, I rub my neck with this ointment; now take your sword, strike my neck, and you will see the virtue of my art." The soldier, induced by curiosity and love of novelty, makes the experiment, and cuts off the head of Eulalie, who, by this means, was saved from the danger of losing her virginity.

Ques. 1. Did Eulalie act lawfully? Was it necessary to resort to death, in order to save her chastity?

Ques. 2. Could she throw herself through a high window to escape violence and preserve her virginity?

Ans. Question 1. No, in principle; except in case of celestial inspiration, or of good faith. The reason is, that she directly procured her own death.

Ans. Question 2. Yes, because death, although the consequence of the fall, was not directly desired.

Case IX.

Abortion.

Gaspard, a physician, making a general confession, avows to his confessor that: 1, to a pregnant woman, on the point of death, he gave a remedy that was a sure cure, but foreseeing that the fœtus would perish; 2, to another one, on the point of certain death, he had given a remedy the effect of which was to kill the

fœtus and expel it, in order that the woman delivered should get cured.

Ques. What is to be thought of Gaspard?

Ans. In the first case, he is not reprehensible. . . .

In the second one, he has gravely sinned, by committing a direct homicide. In fact, though the intention was good, he obtained the result by unlawful means.

Case X.

Abortion.

Cure of a mother through the death of her child.

Pelagie, pregnant for four or five months, is dangerously sick, and on the point of death. Besides the family doctor, three others are called in consultation. After deep deliberation, here is the decision: If the art of the physician can procure the expulsion of the fœtus, the latter will perish, but may probably be baptized before death, and the mother will be saved from certain death. Otherwise, mother and child will both die, and the child will be deprived of the benefit of baptism. After this decision, they prepared to effect the expulsion. The result confirmed their prevision; the child was expulsed, and after having been baptized died immediately, and the mother was saved.

Ques. Is this justifiable? In this case can one procure an abortion?

Ans. No, absolutely; because abortion is in its nature certainly a homicide. It is employed, and is destined *in itself*, so say the doctors, to effect the cure of the mother and the baptism of the child. Nevertheless, though they apply it to a useful end, they directly seek and procure homicide.

Sixth and Ninth Precepts of the Decalogue.

"Thou shalt not commit adultery. Thou shalt not covet thy neighbor's wife." Exodus 20: 14, 17.

410.—Let us repeat the words of St. Liguori: . . . "As this is a matter most frequently and abundantly treated in confession, I have been obliged, for the instruction of those studying moral science, and in order to be clear, to discuss particular cases. But I beg of the students who are preparing themselves to be confessors, in reading this treatise and the other one on conjugal duty, to reject all curiosity, to often lift up their souls to God, and to recommend themselves to the immaculate Virgin." * . . .

411.—Lust is an unruled appetite in love, and consists in a carnal pleasure (*delectatio venerea*) tasted voluntarily outside of marriage. Now, that pleasure is produced by the excitation of the genital organs, and must not be confounded with a purely sensual pleasure from the contact of a sensible object on some one of the senses; for instance, from a visible object on sight. Lust and sensuality have then a different object. A sensual pleasure either is not guilty, or does not exceed, most of the time and in principle, a venial sin.

There are several sorts of lust. There is a difference between bodily contact and immodest looks, between solitary acts and those done with others, between consummated acts and those

* This is a good precaution; but we must also remember how the ancient (?) Jesuits, while condemning lustful sins with indignation and a chaste horror, found, nevertheless, that there are practical accommodations.

Escobar, quibbling on the sins which Pius V. saw himself obliged to prohibit to priests addicted to sodomy, makes very clever distinctions, which a low an excuse: "1, Priests who have unnatural relations with women; 2, who are *patients*; . . . 3, who have committed the prohibited act but one, two and three times; 4, who commit the crime of bestiality."

And as the rape of a woman is punished with death, he concludes that the rape of a young man by a man (*causa libidinis*) is not punishable. (p. 290.)

which are not, between acts done according to nature and those done against nature. These species are yet subdivided, as we shall see later.

There is lust directly sought out, and lust indirectly sought out. The first one exists where one has precisely in view a carnal pleasure; the second one is, when something else being sought out, the pleasure comes against our intention, as immodest reading done through curiosity, or for any other motive.

412. Lust of every kind and species, is, in principle, a grave sin. . . .

Lust, directly voluntary, never admits of light matters. . . .

CHAPTER I.

Lustful Sins Not Consummated.

ART. I. Immodest kisses and bodily contact.

413.—1. Unchaste contact, made without motive, with a person's shameful parts, are almost always under the penalty of mortal sin, even leaving aside the sensual pleasure, on account of a grievous indecency, and the danger of debauchery brought thereby.

However, it is more easily excused from mortal sin, if it is performed on a person of the same sex.

2. Kissing, or feeling of the honorable or slightly dishonorable parts, constitutes mortal sin, if carnal pleasure is the motive of these acts; venial, if there is nothing more than lightness, joking or curiosity, etc. They are not guilty if it is the custom, or if it is done out of politeness or benevolence.

414.—3. Kissing or touching even the honorable bodily parts cannot be easily excused from mortal sin, if it takes place in a protracted manner among young people, especially of different sexes, without any necessity, because those repeated and prolonged acts produce an excitation and a carnal pleasure.

4. Kissing, touching, embracing for a carnal pleasure, in view of carnal desires, are evils of different gravity, according to the person's circumstances, because they are supposed to be of the same species as the consummated act, to which they lead by their

nature. So, in confession, it is necessary to specify with what persons they have been practiced,—if it is the same sex or of a different one, married or not, etc., etc.

415.—1. There is no fault in the kisses given by mothers and nurses to little children. Neither with those who kiss those children, even of another sex, setting aside any depraved sentiment.

2. We must not readily accuse of a grave sin young people who, in certain games, without any bad intention, kiss each other decently; although it is prudent to advise them not to play those games, on account of the perils which they bring.

3. The opinion of Sanchez, Salmant and others, affirming that there is no sin in the chaste kisses and embraces of young people betrothed to each other, though they seek a carnal pleasure, and there exists a slight excitation of the genital organs, setting aside the peril of pollution and of consent to the sexual union, is looked upon as little probable in practice by St. Liguori, who thinks much more probable, even in theory, the opinion after which such acts are forbidden to engaged young people, just as much as to other free persons. The reason is, that betrothed people have yet neither reciprocal rights on their bodies, nor a right to sexual union to which such acts generally tend.

4. But kissing other more hidden parts of the body, for instance, the bosom, must be looked upon as a mortal sin, especially between persons of different sex; and also protracted kisses on the mouth, especially if the tongue is brought into play.

416.—5. One does not sin in principle, when one is obliged to touch one's self in order to wipe out the bodily filth, to appease pruriency, or attend to some infirmities; however, if the itchings is supportable, one must abstain from touching one's self. But if one touch his body without motive, only a venial sin is committed, provided the carnal pleasure is set aside, as it is done only without reflection, through lightness or pure curiosity, when one does not run the risk of inflaming the passion.

6. Feeling of the shameful parts or about, even over the clothes, constitutes a grave sin: unless it is done only through petulance, joke, lightness, or in passing by. The same may be said of women touching each other's bosoms, on account of the

sympathy of those parts with the sense of touch. There is a near danger, or carnal pleasure.

7. More than that, unless in a case of necessity, there is a mortal sin in touching the shameful parts of a person of a different sex, even for a little time, because it is done only through errotic passion; and besides, it is a gross attempt on decency, leading to the danger of pollution and carnal pleasure. However, servants coming in contact with the shameful parts of children while dressing them, must not be accused of a great sin, unless it is done in a protracted manner, and feeling sensual pleasure in doing it.

8. There is a venial sin, in principle, in touching slightly, and in passing by, the fingers, hands, or face of a person of a different sex, putting aside all thoughts of a bad aim, all sentiments and danger of debauchery, if this is only through pure curiosity, there being no danger for us or others.

Besides, as in so lubric a matter, it is not always easy to see clearly what is venial or mortal; and as there is often a grave danger of sinning, even in cases which do not exceed in principle a light sin; for instance, if this takes place frequently and in a protracted manner between persons addicted to debauchery, the confessor ought to make an effort to prevent the penitent, especially the young one, from indulging in sensual contact with persons of the different sex.

ART. II. Looking on obscene things.

417.— 1. Looks cast without motive on shameful things, constitute grave or light sins, according to the intention of the person, the degree of turpitude, and the danger of consent to debauchery. The sin is not so grievous when acting on our own person as when it is a question of somebody else, because there is less excitation; it is also less grave when it is a question of a person of the same sex.

2. Looks gravely immodest, without serious motives, especially on persons of another sex, constitute, in principle, a mortal sin, even in the absence of all carnal passion; because ordinarily, there

is a near danger of debauchery, as it has been said above about guilty bodily contacts.

Ques. Is it necessary, in looks as in contacts, to take account of the circumstances of persons looked at in an obscene manner?

Ans. No, according to the more probable opinion, if there is no desire; because they are not supposed to tend to the consummation of the act; so the act of looking in such a manner at parents, married people, or sacred persons, do not constitute a fault dependent on adultery, incest, or sacrilege.

418.—1. There is no mortal sin, in principle, when persons of the same sex look lightly at each other being naked, bathing, or swimming, especially when they have not reached the age of puberty.

2. To look at the shameful parts, or near to them, of a person of another sex, constitutes a mortal sin, unless it is from afar, or for a short time; because these looks excite passion, or lead to sin. One is not excused even if they are seen through a very light and transparent veil; in this case, passion, far from being diminished, is increased thereby. Except: 1, if it is a question of a child, or of an old man, quite passionless, because they are not much excited; 2, if one looks at a very young child, there being not much of excitation. So servants and nurses do not commit a grave sin in looking in this way at the children confided to their care, unless they do it in a protracted manner, at different intervals, or with a guilty sentiment.

3. To look at the honorable parts of a person of another sex, even being beautiful, is not a sin in principle, if it is not done through curiosity or with persistence; the sin is generally venial, but it is a mortal one when one looks for a long time, running the near danger of a shameful concupiscence or of a protracted pleasure, especially if the mind is excited, and with more reason if one loves the person inordinately.

4. To look at the parts slightly dishonorable, but not shameful, of a woman, as the bosom, arms, limbs, do not constitute a mortal sin in principle, putting aside however, the near danger of a guilty satisfaction, which would easily be produced if the act was protracted. But generally, those who look without motive at

the bare bosom of a beautiful woman, with a notable insistance, are generally guilty of mortal sin; because of the peril encountered by the sight. But there is not a grave sin when, leaving aside all special peril, one looks at mothers and nurses suckling children, also, by looking on the uncovered bosom of an old woman, or of one too young to be physically developed.

5. To look at obscene paintings through pure curiosity is not a mortal sin, if there is no shameful pleasure, nor any near danger. But in practice, it would be difficult to excuse of mortal sin a man who would look at the shameful part of a woman in a painting; because he could not avoid very well experiencing shameful pleasure at the sight, unless for a short time, from a distance, or that the state of decay of the painting should attenuate the strength of the temptation. Billuard, with others, excuse from mortal sin those who look slightly, passing by, through curiosity, or if the paintings represent only children, because painted pictures do not excite as living things do. This opinion seems probable, unless it should be necessary to judge otherwise, on account of the weakness of the looker-on.

ART. III. Immodest reading and conversation.

419.—1. To say, sing, and listen to obscene things with the intention of finding in them a carnal pleasure, or run the danger of consent, is a great sin. But if there is no guilty intention, no peril of consent, and there being a legitimate cause to say, write, or listen to them, there is no sin.

2. To read obscene books without a legitimate reason is a grave sin, even if it is done out of curiosity or for distraction, in principle, such reading leading to debauchery. Except occasionally, and taking into consideration the case where the readers, out of personal curiosity, advanced age, cool temperament, and their knowledge of these things, would not run into the grave danger of giving way to passions.

3. To read books about love, or that are slightly obscene, is not a mortal sin in principle, though it is very dangerous in practice, especially for young people. As for obscene books up to a certain point being also scientific, it is not, in principle, a sin

to read them, in order to instruct one's self or for a beneficial purpose, setting aside the peril of carnal pleasure always to be feared in young people.

420.— 1. It is a grave sin generally, to speak even in joke of the conjugal act, or what is permitted or forbidden between married people, of the means to prevent conception, or to procure pollution, especially if it is between young people of different sex.

2. It is a grave sin to tell shameful things for the only pleasure that is found in thinking of them. There is no excuse for those who, in joking, have recourse to equivocal, but clear sayings, meaning to tell the thing in order to amuse themselves.

3. It is a grave sin to boast of one's own shameful sins, and generally for three reasons: Because one finds pleasure in it, on account of the scandal, and also the sin of pride.

4. In principle, it is not a sin to tell shameful, but slightly obscene things, if it is for joke or to console one's self; unless the hearers are weak-minded enough to be scandalized about it. Thus, usually, there is no grave sin in the shameful talk of the reapers, vintagers, and waggoners, because generally they say it only for a joke.

5. Gallant conversations between persons of different sex must not always be considered as mortal sins, although they are full of danger, unless they are repeated, prolonged, or held in solitary places.

What shall we think of love-making, as it is called, especially among young people? It is not to be called mortal sin, without distinction; though generally there is in it a near danger of mortal sin, at least in its progress and circumstances; for instance, if the lovers are left alone too long, or during the night, etc., etc.

6. There is no great sin to read light books out of curiosity, because they do not excite passion very much, and do not expose the reader to great danger, such as many comedies and poems do. But if that reading has for object instruction, or the study of eloquence, there is no sin in it.

CHAPTER II.

Lustful Sins Consummated.

ART. I. Sins consummated according to nature.

Section 1. Fornication.

421.—Fornication is the sexual union (*copula*) of a free man with a free woman, by mutual consent. . . .

Section 2. Adultery.

422.—Adultery is the sexual union with the husband or wife of another; it is to enter into a bed that is not one's own . . .

Section 3. Incest.

423.—This is the sexual union with parents or relations, of degrees forbidden by the Church. . . .

Section 4. Sacrilege.

424.—According to the sin of lust, it is the violation of a person or of a secret place by a carnal act. . . .

Section 5. Defloration.

425.—1. In the large sense of the word, it means all forbidden venereal commerce; theologians, in its proper meaning, and as far as its particular species is mentioned in the canon law, describe it thus: it is the defloration of a virgin, which happens when she is soiled for the first time by the contact and the consummated act of a man.

Defloration violently consummated, besides the sin against chastity, contains another one against justice, which must be acknowledged in confession.

426.—1. It is defloration to fornicate with an insane virgin drunk or asleep, because she is violated against her consent, and then receives a great injury.

2. According to the opinion more common and more probable, it is not defloration to fornicate with a young girl formally consenting to it, who is in nowise constrained, though she is soiled for

the first time; because the defloration, on account of the formal outrage made to the honor of a virgin, may be looked upon as a special sin against chastity. Then, in this case, a virgin being the mistress of her own body, can use it freely, and cedes her own right. Then . . . it follows that. . . .

3. The defloration of a virgin, if she consented to the act, is not forcibly to be declared in confession, according to the more probable opinion; because, in principle, it is not to be looked upon as a defloration, but as a simple fornication.

4. However, and though physical strength or violence are not required as a condition for the defloration, it is sufficient that a girl is induced to consent, in spite of herself, through craft, threats, repeated prayers, which triumph over her constancy.

Besides, Lessius warns us very wisely, that the violation of a young girl who gives her full consent, though not containing the special malignity of defloration, may contain a grave fault, a special one, which it is necessary to declare in confession, because of the grief and shame resulting from it for the parents.

Section 6. Ravishment.

427.—Ravishment . . . is defined: a violent act performed on a person, or on those on whom she depends, in view of satisfying a lustful desire. . . .

If, after the ravishment, the passion is satiated, not only the sin of lust, in other words, fornication, adultery, or sodomy, etc., but the ravishment itself must be expressly declared in confession.

ART. II. Sins committed against nature.

There are three kinds: pollution, sodomy and bestiality. We must add onanism, or Onan's sin; which is the sexual act commenced but consummated outwardly, to avoid conception, either between married people or other persons. We shall speak of it *á propos* to marriage.

Section 1. On Pollution.

428.—Pollution consists in expending one's sperm without any commerce with another.

The voluntary pollution, the only one with which we occupy ourself, is sought for directly or indirectly. It differs from the distillation, in which a more liquid fluid is expended. In pollution, the sperm is ejaculated with intense pleasure and great commotion. Distillation takes place without any pleasure, or with a slight one. . . .

429.—1. Direct and perfectly voluntary pollution is always a mortal sin. . . .

2. The indirect pollution, or only voluntary, in its cause, is a great sin if . . . and venial sin if . . .

3. The voluntary indirect pollution leads to no sin, when there is no sufficient reason to expose one's self to it; . . . because, when two effects must follow an indifferent cause, a good one and a bad one, it is permitted to expose one's self to the cause, having the good in view though permitting the bad.

430.—Involuntary pollution is, in no way, a sin. Thus, there is no fault in the pollution felt by a doctor, a surgeon, or a confessor, in fulfilling the duties of their charges, provided their intention is pure, and gives no consent to pleasure. . . .

431.—4. Any spermatic effusion done deliberately, and however weak it may be, is a pollution, and consequently a mortal sin. Such is the case if one gives his consent to the pleasure of pollution, even for a little time, even if it is produced without any intention, spontaneously, for some motive; so much the more if it is called forth by some effort. . . .

6. It is not a sin, in principle, to go on horseback in order to amuse one's self reasonably, to lay down in a certain position, to nourish one's self with heating food, to speak with a person of another sex for an honest motive, to be in the service of sick persons, to help them in bath, to practice surgery and other things, though one foresee that a pollution will result from it, provided there is no intention, that one should be decided not to consent, whatever the case may be, and that there should be no danger of consent.

432.—7. The voluntary distillation, even indirect, if it is notable and accompanied by a commotion of the genital organs, may be a mortal sin, because it is a grave disorder, which leads to

the near danger of pollution. But if it is a weak one and without any notable commotion, it is to be distinguished: 1, if it is directly voluntary there is a mortal sin, because all seminal loss brings with it some commotion and effusion; 2, if it is indirectly voluntary, one may easily excuse it from all sin, because it is nothing else but an excretion.

8. Unruled movements, accompanied by venereal pleasures, whether grave or light, are mortal sins if . . . venial sins if . . . and sinless if . . .

9. When a violent itching is felt in the shameful parts, it is permitted to soothe it with the help of the hand, though a pollution should result from the act; provided that such itching is caused by the acrity of the blood, and not by lustful passion; because, if pollution is produced, by setting aside the peril of consent it is *accidental*, and so there is no fault in it.

SECTION 2. On Sodomy.

433.— The horrible crime of sodomy consists in cohabitation with a person of the same sex or of the different one, but in a manner against nature (*in vase indebito.*) There is then perfect sodomy, which consists in having relations with a person of the same sex; and the imperfect sodomy, with a person of different sex, but outside of the natural laws, (*extra vas naturale*), or with a passion contrary to nature (*affectus ad vas innaturale.*) . . .

434.— 1. Perfect sodomy is not of the same species as the imperfect one, because in the first, one man is drawn towards the same sex and against nature; in the second one, he is attracted only against nature.

2. The act of a man with a woman against nature, is an imperfect sodomy, distinct in species from the perfect one.

3. One could not call sodomy *si fieret tantum applicatio manus, aut pedis, ad partes genitales alterius*, because there would be no sensual connection.

4. More probably, one must not declare in confession who has been the agent or patient, because the species of sin is the same. But pollution, if there has been any, as it happens more easily to the agent, must be fully related.

SECTION 3. On Bestiality.

435.— The infamous and abominable crime of bestiality consists in having relation with a beast. . . .

436.— Unclean handling of a beast, though not a sin of bestiality, so called, must be declared in confession, if carnal pleasure has been in view. But the circumstances must not be necessarily declared, *si quis mediante lingua jumenti, aut alterius bestiæ, voluptatem veneream aut pollutionem in se excitet.* It is not necessary to declare in confession what kind of beast it was, if it was a male or a female.

Cases on the Sixth and Ninth Precepts of the Decalogue.

Gury does not think it is urgent to study any particular case, because "if every thing pertaining to this lustful matter is extremely frequent in practice, there is no serious difficulty in explaining them."

Treatise on the Seventh and Tenth Precepts of the Decalogue.

"Thou shalt not steal." Exodus 20: 15–17.

The Seventh Precept of the Decalogue forbids any attempt on the property of others.

The Tenth Precept forbids the internal sin of concupiscence, in other words, the desire for others' property and unjust action towards them. We shall speak of the different sins of injustice regarding goods, in the treatise on justice and rights.

Cases on the Seventh and Tenth Precepts of the Decalogue.

They are to be found in the special treatise on justice and contracts.

Eighth Precept of the Decalogue.

"Thou shalt not bear false witness." Exodus 20: 16.

CHAPTER I.

Lying.

ART. I. Lying in general.

438.—A lie is a word or a sign contrary to the thought, with the intention of deceiving. If it is made by sign or by action, it is called pretence; pretence in its turn takes the name of hypocrisy, when one simulates to be other than one is; for instance, a sinner who pretends to be just.

There are three kinds of lies: prejudicial lies, by which one wrongs another; officious lies, by which one helps one's self or another; and joyous lies, to make people laugh.

439.—Lying, properly so-called, is always an evil. . . . the prejudicial lie has a gravity proportioned to the wrong done, and which one is obliged to compensate.

The officious lie is a venial sin, in principle; because it does not occasion a grave disorder; for better reason, the same may be said of the joyous lie. . . .

ART. II. Mental restriction.

441.—This is an act of the mind turning aside, or restricting the true meaning of words about some subject, to another sense than the natural one; whence it follows that it is not true, unless it is taken in the same sense given by the speaker.

Mental restriction is: 1, *purely* and *strictly* mental, if the sense attributed by the speaker can in no way be understood, whence it is called properly mental; 2, *largely* or *improperly* mental, if the sense can be understood by what is added to it. Mental restric-

tion comprises equivokes or amphibologies, words with two meanings, the one more natural, and the other less *

442.—1. It is not permitted to make use of the purely and properly mental restriction.

443.—2. It is sometimes permitted to make use of the restriction largely; that is to say, improperly mental, and also of equivocal

* Jacques Platel has explained this difference in the most luminous terms, (1680):

"God cannot (and this is never permitted to men, for any cause whatever) use purely mental restriction, in other words a restriction which in no way lets itself be perceived, neither by circumstances nor by any external marks.

"God can, however (and this is also permitted to men for a just cause), use the restriction which is not purely mental, when the words externally pronounced are joined with external circumstances, which gives such help to the sense of words that an intelligent hearer is able to understand the restriction internally retained, or at least suspect it." (Page 322.)

Pope Innocent XI. had condemned amphibology; but the Jesuits had victoriously answered. Jean de Cardenas, who published in 1702 a special dissertation on the Papal decreee, expresses himself in such a way as to take all scruples away:

"Thomas Sanchez," says he, "proposes two kinds of amphibologies which he looks upon as certainly allowable, supposing there is a just cause for seeking for the truth; the first one is, when the words used are equivocal, and that the one who speaks uses it in one sense, while the hearer thinks he is speaking in another sense. In this case, if there is no just cause for hiding the truth, such an amphibology is not allowable, but it is not a lie. For instance, if any one had killed a man of French nationality, in Latin *Gallum*, he says, without lying, that he did not kill *Gallum*, meaning that Latin word *Gallum*, which means a rooster. It is such an amphibology that is mentioned in the reflection on the chapter *Ne quis* 22, question 2, in these terms: Let the one who is interrogated acutely deceive his interrogator, by answering in Latin, He *is* not here, meaning he *eats* not here, being favorised by the equivocation of the Latin word *is*, which means equally he *is*, and he *eats*.

"It is certain that this kind of amphibology is not condemned by Innocent XI.; because he condemns only the amphibologies which are made by means of a mental restriction adding to the spoken words a thought inwardly retained.

"Now in the kind of amphibology of which it is questioned here, no inward thought is added to the uttered words; because these different significations are equally proper to the equivocal words in themselves." (Page 324.)

Here is the precious doctrine offered to the meditation of little children:

Ques. "Is it justifiable to use equivocal words, or mental restrictions?"

Ans. "It is not justifiable to use them, when they are such that the sense cannot be understood by the hearers; because then, they are actual lies. But when, according to custom or circumstances, the true meaning can readily be understood by the hearers, they may be used, if there is a legitimate reason for doing so." (*Petit Catechisme de Marotte.*)

words, when the meaning of the speaker can be understood. The reason is, that *in itself* it is not an evil, others not being properly deceived; but for a just motive, they are placed in a situation to deceive themselves. Besides, the good of society demands that there should be a means to lawfully hide a secret; now there is no other way than by equivocation or restriction, largely and improperly mental.

One is permitted to use this restriction, even under oath. . . .

444.—A culprit interrogated judicially, or not lawfully, by the judge, may answer that he has done nothing, meaning: "about which you have the right to question me;" or, "that I am obliged to avow." *

* This is Emmanuel Sa's own formula, in the year 1600: "Any one not legitimately interrogated, may answer that he does not know anything about what is asked, understanding mentally, in such a manner that he is obliged to tell it." (Page 295.)

Lessius speaks in the same way: "If a judge interrogates on an action, which must have been committed without sin, at least a mortal one, the witness and the culprit are not obliged to answer according to the judge's intention."

We see that the doctrine has remained intact till our day. We find the proof of it in more recent facts, when a civil judge allows himself to question a clerk about matters about which the latter believes that he need answer nothing to the civil authority.

For instance: On the 11th and 18th of December 1879, the priest Vincent was arraigned before the police court of St. Julien (Haute-Savoie), incriminated for having illegally opened a free school. The sitting was marked by a curious incident, reported as follows by the *Patriote Savoisien:*

"Bad faith, lies, concealments of all kinds, have not been lacking to the culprit and professors of the school called as witnesses.

"At the beginning of the examination of a young priest, the president of the court deemed it useful to recall to him the importance of the oath, on account of his sacerdotal character.

"The reserved bearing of this witness, his efforts to escape the incisive and precise questions of the magistrate, brought him this sharp and witty reprimand:

"I was not wrong, sir, to recall to you the importance of your oath before justice; I see, with grief, that your calculated concealments show me that I was entirely right."

"The attorney of the Republic, in his turn, did not fear to tell the culprit: 'As a magistrate, I am indignant at your attitude; and as a *Catholic*, I am ashamed of it.'"

Those words, from the mouth of a good communicant Catholic magistrate, have a signification understood by everybody.

If the words of the worthy magistrate have been understood, it seems that those of the priest have not. The latter remained in the strict right, and obeyed Gury. The right to teach belongs to the Church and to the

This mode of restriction may be used by all public functionaries questioned on things confided to their discretion; or secretaries, ambassadors, generals, magistrates, lawyers, physicians, and all those who have reasons, to hide some truth relative to their charge. Because, if the secrets confided to those persons were violated, grave inconvenience would result for society.*

Church alone; the civil law, in this matter, is purely penal; the incriminated act was nothing else than a sin. Then the judge had truly no right to interrogate, and the priest could answer whatever he liked, even being under oath. He would have, if he had dared to do it (but the revolutionary spirit has mollified the strongest courages,) answered with Taberna:

"A priest cannot be obliged to bear witness before a secular judge;" or with Tambourin:

"The culprit, if he is a priest, may swear equivocally before a secular judge; that he has not committed the offence; . . . because the judge is incompetent towards ecclesiastics. . . ." Or better yet, with Fagundez: "If the judge questions an action done without sin, at least a mortal one, the witness and culprit are not obliged to answer according to the judge's intention, in a case where the judge might believe that there is fault on the part of the accused one, and for that reason would think that he is in duty bound to punish him severely." (Page 315.)

"He might have even victoriously sustained the same thesis, in a far more important matter than the illegal opening of a school, Has he not with him, besides other illustrious doctors, *Georges Gobat*, (1701)?

"If you have killed Peter in self defence, *you can swear before the judge* that you did not kill, restricting mentally *unjustly*, if you cannot prove what is true, nevertheless, that your defence has been really legitimate. . . . In the same way, when it is more probable that the profit on certain goods is too low, and that on account of this you use false weights secretly, you can, in presence of the judge, *deny under oath*, that you have been using false weights, (adding mentally,) from which the buyer has unjustly suffered." (Page 322.)

* The hardness of the times and the sarcasms of infidels have compelled the Good Fathers to attenuate very much, in theoretical exposition, the compliances of their doctrines. Doubtless the ground work has remained the same, as is easily recognized by a perspicacious eye, and as facts of experience demonstrate, but they speak with less clearness. Ah! what a good time when the true doctors could speak freely! Listen:

Tolet: "A culprit is not permitted to tell a lie. . . . However, he can say: I have not done it; or, I have not had any accomplices. But he must take good care to say these words in a sense true and conformable to the intention he has in his mind. For instance, if he answers: I have not done it, it is necessary that his thought should be to say, I have not done it since I am in prison! If he answers: I have not had any accomplices; he must mean by that answer, in some other crime than the one about which he is interrogated, or some other similar intention; otherwise he would tell a lie, whilst he does not tell any in this way; because, in this case, the words must be considered not according to the judge's intention, but according to that of the culprit" (Page 297.)

Suarez: "A lie is something said against the very thought of the

CHAPTER II.

DEFAMATION.

ART. I. On the Sin of Defamation.

445.—Defamation is the unjust violation or reviling of another's reputation by words not expressed in public . . .

speaker himself; because it is the one who speaks who is obliged to conform his words to his own intention, and he is not always obliged to conform them to the listener's intention. Now one cannot say that such a one speaks against his thoughts who uses equivocal terms in a sense conformable to his own intention. Then he does not lie; then he does not utter an untruth; then, to speak thus is not intrinsically an evil; because it would be only on account of the lie that evil could exist. Whence another conclusion would be, that there is no perjury in affirming under oath what is said in such a manner; because by that oath one does not take God as a witness for a lie, there being no lie." (Page 300.)

. . . . . .

"If some one who has promised, or externally contracted without intention of promise, is questioned by the judge, and is called upon to declare under oath if he has promised or contracted, he may simply say, No; because that may have a legitimate sense, viz.: *I have not promised by a promise which binds me;* and he has a legitimate reason for answering thus; because otherwise, not being able to prove the lack of intention, he would be condemned to pay what he does not owe in fact, or to cohabit with a person with whom he has not truly contracted. Navarre teaches this thoroughly.

Filliutius: "We must distinguish two ways by which persons with judgment may use amphibology. The first one consists in having the intention to say outwardly but material words; and for greater safety, when one commences by saying: 'I swear,' must add inaudibly, 'that I say;' and answer aloud, 'that I have not done this or that;' because the saying is true in this way. The second one consists in having the intention not to finish the sentence by external words only, but also with a mental restriction; every one being free to express his thought fully or in part. As for ignorant people, who do not conceive of amphibology in particular, it is sufficient that they should have the intention of affirming or denying in a sense true in itself, and for that, it is necessary that they can also deny in some truthful sense, otherwise they could not speak in a sense conformable to the truth." (Page 309.)

F. de Castro Palao, shows in this a spirit of foresight and prudence above all praise: "Every time that a just subject for disguising the truth presents itself, one can, without sin, give an amphibological oath, as is proved by the examples quoted, and the reasons alleged; because such an oath contains justice and truth; and inasmuch as the oath is useful it does not invalidate the judgment. It is then in no way vicious. . . . So, even if the questioner should exclude all equivoke, and if, besides the oath taken, he should ask for another oath not to calumniate, and should exact you to swear to tell the truth sincerely and without equivocation, you would, even then, use an amphibological oath, mixed up with restriction; because you can mentally reserve that you swear without any unjust

Defamation is called *simply* such, if the reputation of a person is violated by the revelation of a true crime; it is called calumnious if a false crime is invented. Defamation can be direct or indirect.

. . . .

446.—Any direct defamation, simple or calumnious, is mortal in itself; because it is a graver sin than theft. But the gravity or slightness of defamation ought to be estimated especially in consideration of the gravity of the damage caused, and not of that of the crime attributed to the defamer. One must then take into account the value of the defamer, and that of the defamed.

equivoke. There is, in fact, no proposition in whatever large spirit it is taken, which is not susceptible of some mental restriction." (page 313.)

Busenbaum: "It is not a mental restriction if some one answers according to the thought of the questioner, though the words he utters in the answer are false in themselves, if they were not said regarding such circumstances. For instance, if some one asks me if I have killed Caius, I answer: I have not killed him. Though I did kill him, I do not lie, I do not sin." (Page 339.)

But Charles Antoine Casnedi carries the day by having profited by the experience of his predecessors, so far as the judgment of an humble layman, incompetent in morals, can go.

"Now," says this great man, "I am going to examine a new manner of telling no lies while hiding the truth; and this, not in shutting one's mouth, but by the speaking itself.

"This manner consists in speaking but materially, and in pronouncing words with the intention of giving them no signification, as if, in fact, they had no meaning whatever; just as when I pronounce the word *blictri*, or as when some one pronounces words which he does not hear. Because words drawing, so to speak, their life from the intention that one has of giving them a signification, it follows that without that intention, the proffered words are like dead words, or some kind of skeletons of words; they have then no formal sense to mean what they ought to signify by their institution. (Page 325.) . . .

"But supposing once that these words: I do not know, I have not done it, or other similar ones, do not signify anything, in a case when speaking is necessary, and notwithstanding, at the same time hide the heart's secret, one explains how easily: "Not only is there none, but even these cannot be any lie in the one who speaks, because no one lies but by words which signify something opposed to what is in the mind.

"The one who swears materially does not swear, because, in order to swear, the use of the words "I swear" is necessary, as signification of the oath. Then the one who uses the words "I swear" as not being significant, does not swear." (page 327.)

Grégoire de Valence (that illustrious man), says the Jesuit Clair, who was taken in the flagrant offence of falsifying texts before the Pope, Clement VIII., (See *La Fusee d'un Jésuite*, by Lanjuinais, 1879, page 64) had the same idea, but did not express it so clearly. He proposed to give to the word *horse* the value of the word *man*, to *obolas* the value of *ducat*, etc. But it was not very practicable."

447.—It is never allowable to attribute a crime to some one without cause, as results from the 44th proposition condemned by Innocent XI. But one can reveal the true and hidden crime of some one, when he has a just cause. These just causes are: 1, The notable interest of the revealer, for instance, in order to ask for aid and advice in a grave matter, but taking care not to have the desire to defame; 2, the interest of the delinquent, for his instruction, his correction, etc.; 3, the public interest, to prevent some evil threatening the State, religion, or some community; 4, the grave, even private interest of the one who listens, or of somebody else.*

448.—Ques. Is it a grave sin to reveal the one mortal sin of another?

Ans. It is not always a mortal sin, even, when it has been revealed to several persons.

449.—Ques. Can one reveal a published crime to those who are ignorant of it?

Ans. Yes, without any grave sin.

Ques. Can one reveal a published crime in a place where it is ignored?

Ans. Yes, more probably to one's self, and without any grave sin, if it is a question of a neighboring place. . . .

. . . . . .

455.— . . . It is not sinning mortally to speak evil of some one unknown and indeterminate; to say, for instance: there are in such a place many thieves, drunkards, and immodest persons;

* The *Petit Catechisme de Marotte* does not fail to reproduce this exception which destroys the whole rule, taking care to pick out some admissible species, in order to make the principles pass:

Ques. "Is it never permitted to publish the faults or defects of others?

Ans. "It is permitted to publish them when there is a necessity for it; in other words: 1, when it is for the good of religion or the State; 2, when the one who reveals the faults or vices of another does it for his own advantage; for instance, to defend himself against calumny, to ask for advice or aid in an important affair; 3, when the good of the one who committed the fault, or who has secret defects demands that his conduct should be known to those being in position to correct him; 4, at last, when other persons have an interest in knowing the life and manners of the offender, in order to guard themselves against the damage they can receive from them."

because nobody suffers a grave injury. In the same way, it is not a grave matter to report the crime of some one whom the hearers do not know and will never be acquainted with, even if his name is mentioned: even this contains no fault in itself. . . .

456.—There is no sin, at least grievous, if, in order to soothe one's self, leaving aside any reviling intention, one relates to a friend the injury which has been done him, though dishonor may result from this to the author. So, according to the probable opinion, servants relating injuries done them by their masters, wives those by their husbands, children by their fathers, ecclesiastics by their prelates, etc., are excused at least from mortal sin; because the author of the injustice cannot reasonably get angry about it, and exact so difficult a thing that the injured persons shall be deprived of consolation and necessary advice. . . .

ART. II. Reparation for outraged honor.

457.—The defamer is obliged, by justice, as much as possible: 1, to make a reparation for the honor unjustly defamed; 2, to pay all damages resulting from the defamation, and foreseen in some way.

. . . . . , ...

460.—Ques. What are the reasons exempting from that reparation?

Ans.—1. If the fault divulged by you to one or several persons has got abroad to the public in some other way, or if the reparation has been made in another manner; for instance, by a judgment.

2. If one prudently judges that the remembrance of the crime is effaced in the course of time.

3. If the reparation cannot be made without endangering the life of the defamer; because life is a gift preferable to reputation. In the same way, if the honor of the defamed one is of less importance than the injury to which the defamer would be liable; for instance, if the reparation had to be made by an honorable man, very useful to society and religion.

4. If the reparation is morally impossible, on account of dis-

tance or other difficulties; for instance, if those who heard the defamer could be brought to change their opinion.

5. If it is judged that those who heard have not given faith to the defamation, as it often happens when done in a moment of anger.

6. If the reviled person has remitted the reparation *expressly* or *tacitly*, provided she can do so, even this presumed pardon is oftentimes satisfactory.

. . . . . .

461.—Ques. Is one obliged to give money for compensation, if the reparation of honor cannot be made?

Ans. No, according to the more probable opinion; because justice demands a return of only what has been taken, or the equivalent of it. Now, one has not taken money by reviling, and it is not the equivalent of honor, since it belongs to another order.

CHAPTER III.

Outrage.

462.—Outrage is an attempt on the honor of a person present, and knowing it . . . .

CHAPTER IV.

Rash Judgments, Suspicions and Rash Doubts.

. . . . . .

Appendix: On Violation of Secrecy.

468.—Secrecy, in general, is all that is hidden: as for what concerns us, it is all that ought to remain hidden by its nature, or by special convention.

There are three kinds of secrets:

The natural. . . .

The promised. . . .

The confided. . . .

470.—Ques. What are the just causes for divulging a secret?

Ans.—1. The well-presumed consent of the person who is interested in hiding that secret; 2, If it has been divulged already

elsewhere; 3, the damage which may be caused by the secret to the public good, or to private interests.

Ques. Can one reveal a secret if he has promised to keep it, even at the risk of his life?

Ans. Yes, if the public good demands it: because any promise contrary to the public good is void. . . .

471.—Ques. Do we sin gravely by divulging a secret to one or two honest persons, enjoining them to keep it?

Ans. No, in principle, according to the probable opinion; because in this case one does not do a great wrong.

Ques. Is it a grave sin to open or read the letters of another?

Ans. Yes, in principle . . .

Except in the following cases:

1, If there is a tacit or presumed consent of the writer, or of the one to whom it is written; 2, if one knows or presumes that the letter does not contain anything of importance; 3, if one has a legitimate reason; for instance, to prevent a public or private misfortune, provided one reads only what is necessary for that purpose; 4, if one opens it carelessly, or through inadvertence.*

. . . .

472.—You must keep a *confided* secret, even if you are questioned about it by a superior, a judge, etc. You must answer them: "I do not know anything about it;" because that knowledge is for you absolutely as if it did not exist; and this, should the secret be confided expressly or tacitly. . . .

. . . . . .

* Marotte has not failed to present these elegant formulas to children:

Ques. "Is it permitted to open and read sealed letters addressed to someone else?

Ans. No, it is forbidden under penalty of a grave sin to open letters sealed and addressed to another: and even to read those found unsealed and placed on a desk or some other place of that kind; unless we have reason to believe in the consent of the author of the letter, or of the person to whom it is addressed."

Cases on the Eighth Precept of the Decalogue.

Case II.

Mental Restriction.

1. Theofride, having received an inheritance and hidden his riches in order not to pay his creditors, answers that he has hidden nothing. Another time, having returned some money he had borrowed, interrogated by the judge, he denies having received it. At a third time, questioned by an officer of customs if he was carrying goods liable to duty, he answered negatively.

2. Anna, guilty of adultery, as her suspicious husband was questioning her, answered him at first that she had not broken her marriage vow. Then, having received absolution for her sin, she answered: "I am innocent of such a crime." A third time, to the entreaties of her husband, she absolutely denied the fault: "I have not committed it," said she; meaning "adultery such as I am obliged to reveal;" in other words, "I have not committed an adultery."

Ques. 1. Must Theofride be condemned as a liar?

Ques. 2. Must Anna be condemned?

Ans. Question 1. Theofride has not sinned against truth in the first case; because, in reality, he has hidden nothing, according to the sense of the questioner,* or in the sense in which one

* This is exactly, in spite of the reticence of the Compendium, the true and primordial doctrine. Listen to Emm. Sa:

"It is not a mortal sin to swear falsely as *to the words*, when your oath is true as *to the intention* of the one who interrogates you; as, if you swear in pestiferous times that you do not come from such and such a place, adding mentally, where the plague exists; or that you have not spoken to a certain man of the things that your interlocutor suspects. In this way many think with probability what does not seem to me quite sure, and which I would not advise anyone to do; without, nevertheless, disapproving one who would do it. According to the same doctors, you can swear before the judge that you have not done a thing, viz.: in his

could justly interrogate him. So by answering that he has hidden nothing, it is as if he said: I have committed no injustice against my creditors; this being the only sense in which the judge and creditors can interrogate him.

And he has not sinned in the second case, for the same reason; because he is questioned only on his debt, whether he has received the borrowed money, and if he has not returned it.

Neither in the third case,* at least according to the probable and common opinion, which looks upon those laws concerning the transfer of objects from one place to another as purely penal. So to say "I have nothing," it is as if one was saying, "I have nothing to declare of myself; it is your duty to look for it yourself, instead of questioning." But we advise ecclesiastics to tell the truth, to avoid a scandal by denying the thing, if it comes to be known.

Ans. Question 2.—In the three cases Anna may be excused from any lie; because:

In the first case, she could say that she had not *broken* the marriage bond, it being existent yet.†

own way of thinking; and to answer one who would constrain you to do something not permitted, or which you are not obliged to do, that you will do it; viz.: if that is permitted, or if you are forced to it; and also to one who tries unjustly or by force to draw a secret from you, that you are ignorant of it, viz.: in such a way that you are obliged to reveal it.

"Moreover, they say that when you are not obliged to swear conformably to the intention of your questioner, you can swear relatively to your own; this others deny, saying that such a way of understanding one's own intention does not exclude absolutely false expressions. But both parties are learned men, who, respectively, think with probability."

* Gury reproduces here the *case* already imagined by Sanchez. (1614). And even Sanchez's man is more excusable than Gury's, according to lay morality. "The one who has hidden some property for fear that it should be seized by his creditors and he should be reduced to poverty, such a man, I say, questioned by the judge, can swear that he has hidden nothing. And those also who know of it, may swear to the same thing, provided they are assured that he lawfully hid that property for such an aim, understanding mentally that he hid nothing about which he is obliged to declare to the judge." (Page 302).

† This is almost as good as the *Case* of *Fegeli*: "A man being asked if the thief has passed that way, can answer, lawfully, putting his foot upon a paving-stone: *He did not pass this way;* meaning, on this paving stone.

In the second case, she could call herself innocent of adultery; because, after having been to confession and having received absolution, her conscience is at rest, having the moral certainty that her sin was pardoned. She could even, according to St. Liguori, affirm it under oath.

In the third case, she could deny her sin, according to the probable opinion, meaning: "In such a way that she was not obliged to reveal it to her husband;" as a culprit may say to a judge who does not question him legitimately: "I have not committed any crime," adding mentally, "in such a manner that I should reveal it." This is the opinion of St. Liguori, and of many others.

Case V.

Defamation.

Pascal, knowing of a crime committed very secretly by Peter, reveals it to Paul, and uses an oath to enforce the belief on Paul's mind. But he makes Paul promise also, under oath, that he will never divulge it to anyone. Soon, however Paul violates his oath, and reveals Peter's crime. . . . Later, Paul repents, . . . and forms the resolution to acknowledge that he has been mistaken, when he learns that Peter has previously defamed him (Paul); then he decides not to retract anything until Peter sets the example.

Ques. 1. Has Pascal sinned equally by revealing Peter's crime to one man only?

Ques. 2. Has he sinned against religion, by making an oath to confirm Peter's crime?

Ques. 3. What is the sin of Paul in violating his own oath?

Ques. 4. Does the obligation to repair the honor cease; or is it only postponed, if the defamed one has equally defamed his defamer?

Ans. Question 1. Pascal sinned gravely if he has foreseen, even confusedly, that Paul would reveal the secret. In the contrary hypothesis, there is controversy; most of the theologians say, Yes; more, probably; because there is no actual defamation in relating the crime to one man only; however, more trustworthy

authors deny this probability, reputation being dependent on the opinion of the generality of men.

Ans. Question 2. Pascal has sinned against religion by taking an oath to confirm his saying, because he swore without a cause, and uselessly invoked God's name. . . .

Ans. Question 3. Paul has sinned gravely against religion and against justice.

Ans. Question 4. There is controversy to know whether the defamer is exempt from retracting until the one who has defamed shall retract. Both opinions are probable, according to St. Liguori.

Case VI.

Defamation.

Sylvia, a servant, leaves her master, an honorable man, and learns that Veronica, an honest girl, has entered his service; she tries all means to induce her to leave him, affirming that he is a hard and fussy master. As she was not believed by Veronica, she adds that he is an immoral man, and very dangerous to the virtue of his servants.

Ques. Did Sylvia sin by defaming her master?

Ans. Not at all; because defamation includes an unjust reviling of another. Now, Sylvia's defamation has not been unjust, having been done for a grave and just motive, for the good of the soul, or the salvation of Veronica. . . . Then . . .

Case X.

On Secrecy.

Amand, promised, under oath, to Marinus, that he would never reveal a theft committed by the latter, and about which Marinus told him, making him promise the secret under oath. But, as the thing was not suspected, Amand was called as a witness before the judge, and revealed the secret, after interrogation.

Ques. Was Amand right, and was it his duty to reveal the *confided* secret?

Ans. He ought not to have revealed the theft known secretly under oath; but he ought to have answered: "I do not know

anything," understanding, "nothing that I am obliged to reveal," by using a mental restriction. Because such a secret constrains in all cases, by natural rights, except in a case of public interest. A superior or a judge cannot compel one to violate natural rights: then . . . and here, the reason of common interest does not exist; because society does not run so great a danger from a theft not brought to light. So Amand has committed a grave sin against religion and justice, by revealing publicly, before the court, a confided secret which, under oath, he had promised to keep.

Case XI.

Open Letters.

Olivier, having fallen in love with Rosa, committed several times with her shameful acts. Sometime later, Rosa declares that she is pregnant, and that she will divulge his conduct towards her, if he does not give her two hundred pounds to provide for future expenses. Olivier was going to let her have the money, when he learns that the girl keeps company with Titius. Then he begins to doubt if she is not pregnant of Titius. What is to be done in order to know the truth? Suspecting that the lovers keep up a correspondence, he profits by an opportunity to secretly open Rosa's trunk; he takes some letters and reads them, and finds one in which Titius avows himself to be the father of the child, and declares himself to be ready to take care of him, and pay all expenses. Olivier decides to show the letter, in order to reveal Rosa's trickery and falsehood; but before doing this, he asks for his confessor's advice.

Ques. 1. Is it a grave sin to open and read somebody's letter?

Ques. 2. Has Olivier sinned gravely in reading letters addressed to Rosa, and can he make use of them for his defence?

Ans. Question 1. Yes, in principle; because natural rights and the rights of nations command us to respect the secrecy of letters, for public security and common confidence; otherwise, social relations would be absolutely compromised.

Except in the following cases: 1, when there is a tacit or presumed consent of the writer, or of the one addressed; 2, when

there is a reasonable motive; for instance, to prevent a public or private misfortune; 3, if it is supposed that the matters treated in the letter are of very little importance. In these cases, the reader of the letters would not commit a very grave sin.

Ans. Ques. 2. Olivier has committed no sin, either grave or slight, by taking Rosa's letters and reading them; because he did it for a grave and just motive, in other words, to avoid a considerable loss. Theologians generally teach, that one is justified in reading another's letters, or in revealing a secret, when there is necessity for it, in order to defend one's self or another person for a just motive.

Treatise on the Precepts of the Church.

473.—When there is a grave motive, the Church has the power to establish precepts obligatory on the faithful, for Christ himself has given legislative powers to her, as has been said in the Treatise on Laws, No. 83.

PRECEPTS I, II.

On the Keeping of Feast Days.

. . . . . .

PRECEPT III.

On Annual Confession.

. . . . . .

PRECEPT IV.

On Communion at Easter.

. . . . . .

PRECEPT V.

On Abstinence from Meats, Other than During the Time of Fasting.

. . . . . .

486.—Ques. Is it a mortal sin to eat pies, etc., prepared with meat and butter?

Ans. Yes, if that dish contains a notable sauce; otherwise there is only a venial sin. It is a mortal sin if the sauce has been prepared with a large quantity of meat. . . .

PRECEPT VI.

On the Ecclesiastical Fast.

CHAPTER I.

The Essence and Obligation of the Fast.

ART. I. On the one meal and lunch.

499.—Ques. Is fish permitted at lunch?

Ans. Yes, if it is a question of small fishes, and especially of preserved ones; also, according to the probable opinion, larger fishes are allowed. However, St Liguori thinks that those fishes must not weigh more than two or three ounces. . . .

ART. II. On abstinence from meat in fasting. . . .

ART. III. Hours for meals. . . .

CHAPTER II.

On Causes Which Exempt From Fasting.

. . . . . .

Cases of Conscience on the Precepts of the Church.

They are numerous, but of little interest to lay readers. I will quote only a few of them as examples; such puerilities are curious only for the craftiness they inspire in the faithful, and this with the intention to deceive their priests and their God.

Case VIII.

On Fasting.

Castor, not once, but on several occasions, drinks copiously of wine, beer, etc., on days of fasting, putting into practice the axiom: "Liquid does not break the fast;" and, consequently, passes the whole of fast-time with scarcely any suffering. More than this, from time to time he dips a small piece of bread in wine, and eats it, saying: "In this way the drink will not hurt me." Also, in the morning, he takes some chocolate, tea, coffee, sugar, with a piece of bread, saying: "That these things are taken as a remedy"

Ques. What is to be thought of Castor? . . .

Case XII.

On Excusing from the Fast.

Strigonius would not be willing to violate the fast, though he finds it different in practice. Then he imagines a way of satisfying his appetite, without the risk of sinning. . . . 1, He undertakes very heavy work, in order to profit by the dispensation from fasting in such a case, on account of extreme fatigue; 2, with the same aim in view, he passes the whole day hunting up hill and down dale; 3, he sets out on a pious pilgrimage, obliging him to walk fifteen or twenty miles, always with the same object in view.

Ques. What shall we think of Strigonius? . . .

Case XIII.

On Abstinence from Meat.

Nicodemus eats, without any scruples, on prohibited days, one or two small pieces of meat; because, says he, "so very little cannot be of any account." At other times he eats readily of stews, of pies, of vegetables, seasoned with meat-gravy, lard, etc.; and in so doing he does not think he sins grievously, because meat alone is forbidden by the church.

Ques. 1. What is a light and a grave matter in this law?

Ques. 2. What are the prohibited meats?

Ques. 3. Quod, of Nicodemus?

Ans. Question 1. There is controversy. St. Liguori says that it is a matter of gravity, when we eat the eighth part of an ounce. Voit thinks that a slight matter is the equivalent of a large hazelnut.

Ans. Question 2. The prohibited meats are those of all animals living on the earth. So fishes, frogs, snails, etc., are not prohibited.

Ans. Question 3. Nicodemus sinned gravely, if the little piece of meat was larger than that above indicated.

He has sinned mortally, in principle, by eating of pastry, pies, etc., and of dishes prepared with meat gravies, grease, lard, etc., unless very little of this has been used.

Treatise on Justice and Rights.

PART I.

Nature and Principles of Justice and Rights.

CHAPTER I.

General Notions on Justice and Rights.

ART. I. Nature of Justice.

517.—The word justice seems to be a derivation of just. That is called just which is adequate, and measured with the rule. Whence justice, in general, is that tendency of the soul which strives for that adequateness and that measure. . . .

518.—We distinguish four kinds of justice: legal, distributive, vindicative, communicative. . . .

ART. II. Nature of Rights.

521.—We distinguish especially, the right in the thing and the right to the thing. . . .

ART. III. General Principles of Rights and Justice.

Section 1. General principles of Rights.

522.—Proposition 1. God alone is truly and absolutely the Master of all. . . .

523.—Proposition 2. Man may be a proprietor to another man. . . .

524.—Proposition 3. If a man has acquired some property legitimately, he has acquired an inviolable right in himself to the said property. . . .

Section 2. General principles of Justice.

532.—Proposition 1. Commutative justice obliges under a grave penalty, and at the same time imposes restitution.

533.— Proposition 2. Other kinds of justice oblige under grave penalty, but do not compel restitution. . . .

CHAPTER II.

Principal Kinds of Right.

They are: Ownership, usufruct, usage, servitude.

ART. I. Ownership.

536. Ownership is the legitimate power of disposing of a thing as of yourself.

There is the perfect ownership and the imperfect one, according to the right that we have of disposing both of the thing itself and of its benefits, or of either the one or the other only.

The imperfect one is subdivided into direct and indirect, or useful.

There is also high ownership and low ownership. The first one is the right of the supreme power to dispose sometimes of private properties for the good of the community. The second one is individual ownership.

Section 1. Object of ownership.

537.—1. Man has the useful ownership of what belongs to him intrinsically, viz.: the soul and the body. So he may, without doing wrong to anyone, use them for his own benefit, for any purpose not interdicted by law.

However, the Holy Scriptures establish that he has not the direct ownership of them.

538.—2. Man may have the useful and direct ownership of external goods legitimately acquired. . . .

539.—Ques. Can a man have the right of ownership of another man? . . .

Ans. 1. A man can, by natural rights, sell himself for life to another man as useful property. Because, if he can do it for a time, he can do it for life, being able to cede that which he possesses. . . .

2. Slavery, or perpetual subjection, by which one disposes of

all of one's work to another, in exchange for food, is not, in principle, contrary to natural rights.*

540.—Ques. What are the titles to slavery?

Ans. Slavery may come . . . 4, from birth in slavery; because, by right, those born from slaves are slaves themselves. It is thus, by the rights of nations, according to the common opinion.

541.—Ques. Is the slave trade permitted? †

Ans. It is absolutely forbidden and contrary to all rights. . . . But if it is a question of negroes, or others, being in legitimate slavery, in principle, it is not absolutely forbidden; because, admitting slavery to be legitimate, the master has a legitimate right over his slaves and their work, and so it follows that he may transmit it to others. I said, in principle, because circumstances may be in opposition to it; for instance, if it is necessary to separate a woman from her husband, or if the civil law forbids it; since slavery is generally forbidden in Europe.

Section 2. The subject of ownership.

542.—The master of a thing is the one to whom it belongs.

1st point: — Ownership of the sons of the family. . . .

2d point: — Ownership of wives. . . .

554.—A wife does not sin in stealing something for the food and clothing of her family, whose husband does not employ himself, after having asked him in vain.

If a husband wastes or squanders his property, to the prejudice of his family, his wife may hide and keep what she can for the use of the family.‡

* "Slavery does not constitute a crime before any law, divine or human. . . . What reason can we have for undermining the foundations of slavery with the same zeal that ought always to animate us in overcoming evil?" (*Observations on Slavery*, by Rigord, Priest, Fort Royal, Martinique.)

† "When one thinks of the state of degradation in which the hordes of Africa live, the slave trade may be considered as a providential act, and one almost repudiates that philanthropy which sees in man but one thing, material liberty." (Rigord, Priest, Fort Royal Martinique.)

‡ "If the wife apprehends trouble with the heirs of her husband, because of the dissipation of the latter, she can, if she survives him, compensate herself honestly and secretly." (J. Gordon, 1634.)

The wife does not act unjustly, if, without the knowledge of her husband, she takes something which the latter would readily accord if it was asked for; because she has the presumed permission, and oftentimes a legitimate reason; she must not conduct herself as a servant.

The wife can, in the absence of her husband, pay, out of the common property, what is necessary to avoid a gross injury to the family. . . .

555.—Ques. May the wife give alms out of the common property?

Ans. Yes,* even when she has property of her own. . . . The husband is presumed to consent to everything his wife does, providing it is conformable to her habits and position; it would be wholly unreasonable for him to oppose it. . . .

556.—Ques. Is restitution obligatory to the husband who has squandered, or unwisely spent, a notable part of the common property?

Ans. Yes, probably; no, probably: controversy.

557.—Ques. Is it a sin for a wife to subscribe something from the common fund, or from the interest of her dowry, and apply it to the maintenance of her parents, or of children by a first marriage?

Ans. No, if she has no property of her own, and if her husband refuses to give her the necessary money; because, by natural right, she must feed her parents, and the husband must consent to it.

Ques. Is the wife obliged to make restitution for this, if it happens that she shares an inheritance with the husband, or recovers her dowry?

"If a husband, at his death, leaves his property indebted for more than its value, his wife can subtract what is necessary for her maintenance and that of the family. . . . This is the reason why, if she is called to swear that she has taken nothing, she can do it lawfully; because the sense of the question asked would be to know if she had not subtracted something that does not belong to her." (Reuter, J., 1758, page 389.)

* "A wife may give alms either for her husband's spiritual needs, (because, then she makes of her husband's property a use beneficial for him) or in following the custom of women of her rank; if her husband forbids it, he is supposed to forbid only the excess. (J. Gordon, 1634.)

Ans. No, if those subtractions are not considerable: because, then, they are considered as common alms which need no restitution.

Several say equally no, even if the wife has taken a considerble part; because the burden and charges of the family are to be borne by both.

3d point: — Ownership of the Clergy.

562.—Ques. Ought pensioned ecclesiastics to give to the poor what they possess in excess of their need?

Ans. No; because the Holy Father, for a legitimate reason, by paying these pensions out of his own money, already makes use of it for a pious end; they are not obliged then to use it for another pious purpose.

563.—Ques. Ought the pension paid in France to ecclesiastics to be likened to ecclesiastical property?

Ans. Yes; because after the Concordat of 1801, the above pension was established as a compensation for the property taken during the Revolution. Then, it is of the same nature as that property of which it takes the place. . . .

4th point: — Ownership of Authors.

566.—It is certain that every man ought to enjoy the fruit of his work and talent by natural right. . . .

568.—Ques. Has the publisher of a book the right to prevent the sale and printing of it, to the injury of the author or bookseller to whom the author has transmitted his right?

Ans. 1. Yes, according to positive right in force in France and in some other countries.

1. If it a question of natural right, there is controversy. . . .

Section 3. The Acquisition of Ownership.

It may take place:

1, By occupation; 2, discovery; 3, prescription; 4, occasion; 5, by contracts, of which we shall speak in a particular treatise.

First point.—By Occupation.

569.—Occupation consists in taking possession of something belonging to nobody, with the attention of appropriating it to

one's self. It is a legitimate way of acquiring property, provided there are the required conditions, viz.: 1, the object must be susceptible of private proprietorship, and must not belong to anybody; 2, the first occupant must have the intention to appropriate it when he takes it; 3, there must be no law reserving it to a determined master, as for example, the State, as something previously occupied.

The most frequent cases, relating to the possession of animals, we will mention only this one:

We distinguish three kinds of animals: wild ones, . . . domestics, . . . and the tamed ones. . . .

571.—Ques. Do we sin, and how, by hunting and fishing in spite of the prohibition of the law?

It is a question only of those who hunt or fish in a prohibited time or place, without a permit.

Ans. The probable opinion denies that there is any sin against justice, or even against obedience; because, according to custom and the common opinion of men, such law seems to be a penal one only. . . .

572.—Ques. Do we sin against commutative justice by hunting on another's property without his permission?

Ans. 1, No; if that property is accessible there is no sin, unless some other damage result; because beasts ought not to be considered as the production of the land.

2. No; if the property, though inclosed, for instance, a forest by a hedge-row, was very large, in such a way that the animals may easily escape from the hunter or fisher; because, not being seized and used by the proprietor, they do not belong to him. . . .

574.—A swarm of bees, escaped from your bee-hive, belongs to you so long as you can see and pursue it easily. Otherwise, it belongs to the first occupier. By French law, it belongs to the master of the land on which it alights.

Those who buy from the State the right of fishing, cannot be deprived of that right without injustice; but those who would take or destroy such a quantity of fishes as to cause a notable wrong, may be called upon to compensate it. It is different if

only a small quantity is taken; because then, the right of the proprietor of the place does not suffer, as the fishes can escape, and it is not certain that they can be caught in that place. . . .

2d Point.— By objects that are found.

575.— There are four kinds: treasures, recently lost objects, abandoned property, and unoccupied property. . . .

577.— Ques. Is a workman, working about a house, and finding a sum of money hidden in a wall, or in an old coffer, permitted to keep part of it?

Ans. It is necessary to distinguish. If there are indications that it belongs to some member of the family, it must be given up to him, the property being considered as recently lost; otherwise, the workman may keep half of it, because it is like finding a treasure.

3d Point.— By prescription. . . .

4th Point.— By accession. . . .

ART. II. Of usage and usufruct.

593.— Usage is the right of using another's property in sparing their substance. Usufruct is the right to make use of and gather the fruits of another's property, sparing also their substance. . . .

ART. III. By servitudes. . . .

PART SECOND.

Violation of Right, or Injustice.

CHAPTER I.

Injustice in General.

599.— Injustice is the violation of the rights of another. It is *formal* or *material*, according to its being done knowingly or willingly, or outside of the knowledge of our will.

Grave or *slight*, according to the injury caused to others.

Direct or *indirect*, if we seek it deliberately, or only permit and foresee it in its cause.

603.—Ques. Can an internal act make an external one bad?

Ans. 1. No, if the external act does not wrong materially, in principle, the rights of another, notwithstanding the guilty intention of injuring by the act. It is because, where there is no right injured, there is no injustice. So, one does not sin against justice by refusing, through hate, to succor another, unless one is compelled to it by right.

Ans. 2. No, again, when the author has the right to do directly an external act injurious to another, even with the intention to injure; because a guilty intention cannot make unjust what is just in itself, not being able to change the nature of the external act. So, a judge does not sin by an external act against justice, by condemning, through hate, to a capital punishment well deserved; nor a merchant selling at low prices, to do wrong to others. . . .

604.—Ques. What will be the decision, if the external act was proceeding from a bad intention, but with uncertainty as to the evil which will result?

Ans. There is controversy between the most serious theologians. Examples will help to clear up the question: 1, some one places poison or a trap in a place very little frequented by his enemy, but with the intention to kill him if he happens to pass that way; 2, a physician prescribes for his hated patient just what he is obliged to, nothing more, because he hates him; and the patient dies. Have they caused these unjust deaths?

There are two opinions: the first one, which seems the more common, answers No; because in one way, the external act is not unjust, since, in human acts, we must not think of the real possibility of doing wrong to another. Besides, the internal act does not contain any injustice on account of the intention, the intention having no influence over the efficiency of the cause; in other words, over the risk of damage. Thus, it is a purely accidental cause, and the guilty intention does not change its nature.

The second opinion answers, Yes. . . .

CHAPTER II.

Injustice in its Kind, or, Sins Against Justice.

ART. I. Nature of Theft.

605.—Theft consists in taking what does not belong to you, in spite of the reasonable will of the master.

We distinguish:

Simple theft, committed in secret.

Rapine *plunder*, done with open violence.

Sacrilegious theft, if it is a question of a sacred thing.

Theft, in its species, is a very grave sin; because it is, in principle, quite contrary to natural law. . . .

606—Ques. When is there a grave matter in a theft?

Ans. 1. It cannot be determined. . . .

607.—Ans. 1, In order that a theft should be looked upon as grave, relatively, . . . it must be of the value: 1, of one franc for the poor, and a little less for the very poor: 2, about two or three francs for workmen who live day by day; 3, about three or four francs for moderately rich people; 4, about six or seven francs for rich people.

In order that the matter should be absolutely grave, two or three pieces of gold, of the value of one dollar each, are necessary. But we must remember that the more scarce the money, the greater is its value.*

*In all times the Jesuits have established criminal degrees of theft; not according to the circumstances, as does the lay laws, but according to the amount of the stolen sum and the position of the victim. It is the opinion of Tolet, Navarre, Sotus, Gordon, etc., quoting only the most eminent ones.

Such a preoccupation of the stolen sum lead them to very curious consequences:

Vasquez says, "that the theft of thirty pieces of gold is a graver sin than sodomy;" and Guimenius explains this very learnedly, thus: "The gravest sin is the one which violates the greatest virtue. Now, theft is the contrary of justice, one of the greatest virtues; the sodomy of chastity being least, it follows . . . (page 365)

Such a doctrine is accepted and taught to little children.

Ques. "What is the quantity required, in a matter of theft, for a mortal sin?

Ans. "It is difficult to determine, with reasonable precision, the required quantity necessary to constitute a mortal sin; this depends, not

608.—Ques. When is the thefts committed by wives, children and servants, a grave matter?

Ans. It is admitted by everybody that more is necesary to establish a grave matter in thefts by wives, children and servants, than by strangers. . . .

More probably, the sum must be double; but there is no general rule indicated.

For servants, it depends also on the severity or liberality of the masters, on the quality and nature of the stolen object; for instance, if it is eatable or not, kept under key or not; according to many authors, small thefts of food or beverage never become mortal sins. . . .

560.—Ques. Can small thefts become a grave matter by their totality?

Ans. 1. Yes, absolutely, if it is a question of small thefts to the injury of the same person. . . .

2. Yes, according to common opinion, if it is a question of small thefts to the injury of different persons.

610.—Ques. Are small thefts united to form a whole, if they are separated by a long interval of time?

Ans. 1. No, according to the common opinion; because after a certain lapse of time, small thefts are not supposed to unite, and so, do not constitute a common object in morality. Besides, one does not see grave prejudice done to the owner, not being aware of it, and he is not supposed to be gravely opposed to it.

Ques. What is the time which must elapse between the thefts?

Ans. According to the more probable opinion, no more than two months; according to others, one year is necessary. . . .

611.—Ques. When is there a grave matter in small thefts?

only on the stolen object considered in itself, but also on the condition and need of the theft's victim, on the damage suffered by that person, etc. So, a theft of ten francs' value, even to the prejudice of the richest, is always a mortal sin; but, relatively, to the poor, to workmen, to those who have a competency, a theft of one, two, three, four or five francs, is also a mortal sin.

Ques. Can several little thefts constitute a grave matter, sufficient enough for a mortal sin?

Ans. Yes; and also when these little thefts are morally united, and a notable damage results from them."—*Petit Catechisme de Marotte.*

Ans. 1, If they take place at different intervals to the prejudice of the same person, the matter will be grave when they constitute the half the sum necessary for a mortal sin.

2, If they take place to the prejudice of several, there is a grave matter, in principle, when the stolen sum is twice as large.

Ques. Does a retraction of the will prevent subsequent thefts from uniting with the preceding ones?

Ans. 1, Yes, if the retraction has been efficacious, in other words, if restitution has been made for the first thefts; because, restitution being made, they do not exist any more.

2, Yes, even if the retraction has not yet been efficacious, if the second theft is done for a particular motive.

612.—Ques. Is it a grave sin to steal some small objects, after having committed a theft liable to be considered grave?

Ans. Controversy. . . .

613.—Ques. Is it a grave sin to complete by a small theft the grave matter commenced by other persons to the prejudice of the same owner?

Ans. 1, No, if one is ignorant of the first theft; because, one has no knowledge of the prejudice done to the owner.

2. No; according to the more probable opinion, even if one is aware of that prejudice, but setting aside the case of conspiracy. . . .

614.—Ques. If several persons, without agreeing with one another, but induced by example, commit slight thefts, constituting a grave totality, does each one sin gravely?

Ans. No; according to the more probable opinion, from the point of view of the prejudice done.*

*All that is summed up in a masterly manner by Trachala (1759):

"Observe that it is a greater quantity of small thefts that are necessary to constitute a mortal sin, when they fall on different persons, than when one and the same person is the victim. Thus, says Laymann, if there are thirty merchants, from each one of whom you steal a small quantity, it may happen that you do not sin mortally; because you are not doing considerable wrong to any of them individually. In the second place, if you steal from one or several persons, when the thefts are done at long intervals of time, a greater quantity is necessary to constitute a mortal sin. So, when a servant steals each time one cent, which amounts after four years to a golden ducat, I do not think, says he, that one must look upon him as guilty of a mortal sin. In the third place, if you

ART. II. On causes excusing from theft.

There are two of them: 1, necessity; 2, occult compensation.

SECTION 1. Necessity excusing from theft.

Necessity is extreme, grave, or common. Extreme, if there is a danger of death, or threatening of a very serious evil; grave, when life is full of inconvenience; common, as in the habitual case of poor beggars.

616.—Man can, in a case of extreme need, use the property of others, so far as it is necessary to get himself out of that position; because there is here no derogation to natural rights when one shares and takes for one's self what is necessary in a case of absolute need. In this case, everything becomes common; and the one who takes the property of another in a case of need, takes the common property, which he appropriates to himself, as this took place before the division of property. Then he does not commit any theft.

617.— . . . What is said of extreme need, may also be said of very grave necessity.*

steal to-day from Caius six cents, him from whom you have already stolen many times, but to whom you have made restitution, the last six cents have no relation to the first ones, and consequently do not constitute a mortal sin. In the fourth place, when several persons commit successively several thefts from some one, which, taken together, does that person a considerable wrong, then, if each thief is ignorant of the thefts of the others, no one sins grievously. If they formed together the same thieving project, each one of them sins grievously; finally, if respectively they know of their thefts, but if no one of them should be the cause of the theft of the other, it is more probable that there is no mortal sin committed." (Page 392.)

* The excusing of theft is also a very old Jesuitical doctrine. We read in Pierre Alagon (1620): "Is one permitted to steal on account of the need in which he finds himself?

"He is permitted, either secretly or openly, if he has no other means of providing for himself. It is neither theft nor rapine; because then, according to natural rights, everything is in common. A third person is also permitted furtively to take property and give it to some needful person, as in the above case." (Page 357.)

Longuet: "When one man finds himself in such indigence, and another one in such affluence that the latter may be obliged to help the former, the poor man can take secretly, in a right way, from the rich one without sinning, or being obliged to make restitution." (Page 363.)

Doubtless it is to this way of stealing that Casnedi referred, when he wrote the following obscure sentence: "God forbids stealing only when

618.—Ques. May one take some of the property of another, not only to help one's self, but also others.

Ans. Yes, according to the common opinion; because, in a way, one substitutes himself for the indigent, and shows by the act that one loves his neighbor as himself.

619.—In a case of extreme need, or nearly so, whatever may be the cause of it, can we steal an object of great value, or a large sum, if we are in need of it?

Ans. There are two opinions: the first one answers No; the second one, more probable and more common, answers Yes, provided the rich one is not brought by that theft to an equal needful situation, and the poor one takes only what he needs.*

SECTION 2. Secret compensation.

it is looked upon as bad in itself, but not when it is acknowledged good." (Page 368.)

Busembaum is clearer, and more complete: "One who is very poor may take what is necessary for his maintenance, etc.; and what a man can do for himself, he can do also for another who is in extreme poverty."

De Coninck, Lessius, Dicastillo, Tambourin, add that "a poor man could even kill one who would prevent him from taking the thing needful to him; as one can kill a thief who takes away something of great importance, or at least needful, or who retains them by violence." (Page 385.)

Marotte culminates in an answer admirably laconic, the theory of excusing theft, and of occult compensation:

Ques. "Are we always guilty of theft when we take other's property?

Ans. "No; it may happen that the person from whom the property is taken has not the right to oppose the theft. This takes place, for instance, when the one who takes is in a state of extreme need, and takes only what is necessary to get out of that state; or, when he takes secretly from another by way of compensation, not being able otherwise to get what is justly due him."—*Petit Catechisme de Marotte.*

* Besides, if those thefts were to result in quarrels and wars, we must not be frightened about it, according to Busembaum: "It is more probable that a person cannot, in a case of extreme need, take a thing of great value; for instance 3,000 crowns . . . ; as however, the contrary sentiment is also probable, the indigent can, by holding this last sentiment as probable for him in his situation and at the last moment, take even some precious things, and the rich one could also oppose it by holding the other opinion. From this it will not follow that the war declared would be materially and absolutely just, but only a war formally just, and in the supposition of two contrary opinions, being both probable, which is without any inconvenience." (Page 385.)

620.—It consists in recovering a thing belonging to us by taking something which is not our own.

621.—Secret compensation may be just and permissible, if it presents the required conditions. . . .

622.—These conditions are the following: 1, that the debt is certain; . . . 2, that it cannot be recovered in any other way; . . . 3, that the thing must be recovered by taking natural property, if possible; . . . 4, that a damage is not inflicted on the debtor; for instance, that he is not obliged to pay twice. . . .*

623.—Ques. Can servants, judging that they are not paid enough, have recourse to secret compensation?

Ans. No, in general; because that proposition has been condemned by Innocent XI. . . . Except, after many† . . . 1, If

* There is absolutely nothing changed in the famous doctrine of occult compensation. Already, in 1601, Tolet said: "When some one takes what is due him from another who is not willing to pay back; for instance, if a person was taking from his debtor the sum owed him, he does not steal in that case, and is not obliged to make restitution.

"He does not sin if he observes certain conditions:

"The first one is, that he must be very sure that the sums are due to him.

"The second is, that he cannot easily obtain the payment by way of justice; either because his debtor is a man of power, or that he can show no proof of the debt, or that he fears some harm from the debtor, or that it may cause scandal.

"The third is, that no damage or scandal will result for others.

"The fourth is, he must take all possible precautions, so that the debtor from whom he has already taken the amount of the debt, and so made him pay it in spite of himself, should not pay it a second time.

"The fifth is, he must take nothing more than what was owed him." (page 349.)

De Lugo, who accepts that doctrine with all the Jesuits, has, besides, found a very ingenious species, which allows him to ally the occult compensation with mental restriction: "If I know that you are not disposed to pay me in one month, and that I cannot avoid the wrong you are doing to me without anticipating you and taking what belongs to you in order to defend myself, I can take it, and there is nothing in this that exceeds what I can do for the defense of my property; because if I know that you are to come tomorrow to steal one hundred pounds from me, who can say that I cannot take as much from you to-day, to indemnify myself of the wrong you are to do me to-morrow?

"From this, we conclude . . . that if the judge questions, and even exacts the oath, from one who compensated himself, he can deny; because the sense of his oath is, that he has not taken or does not retain anything unjustly, and in such a way as to oblige him to restitution." (page 361.)

† This beautiful maxim was familiar to the Jesuits of old. Thus, Fernand Rebelle says clearly: "If, for a service rendered by a servant, a

under the pressure of need, the servant has accepted the low price, in a time when the master could not have found anyone at the same rate, or if he has not taken him through pity, the servant begging to enter his service; 2, if the servant is overwhelmed with work that he ought not to do.

Ques. Can a servant compensate himself, if he does more than he ought to?

Ans. Yes, if it is by the express or tacit will of the master that he works excessively; because one who works must be paid in proportion to his work, by rights. . . . The value of this just compensation may be left to the judgment of the servant, provided he is prudent, careful, and distrustful of self, a thing which seldom happens.

624.—Ques. Can we have recourse to secret compensations, if we are condemned by judgment to pay a debt which we have not contracted, or which we have already paid?

pecuniary salary was due him larger, according to the common estimation of the time when the contract between that servant and his master was signed, and if he could not recover it easily by rightful ways, in this case he will be permitted to subtract secretly, and without scandal, the surplus over the lowest price owed legitimately."

S. de Lessau: "Servants, or others, do not sin by taking something, presuming the master's consent; because they persuade themselves, according to the light of reason, that their master will not be unjust." (Page 363.)

The Jesuits had, at least one time, to repent of their teaching. In 1647, a man, Jean d'Alba, who was in their service, stole from them, pretending they owed him, thirty pounds. Traduced before the Chatelet, he argued from the teachings he had received from his masters, viz: "That a person can pay himself for his wages." The judge, on the 4th of April, set him at liberty, with a simple admonition. (Page 360.)

After Innocent XI. had condemned them, they were compelled to give in; but soon, however, they set about quibbling.

J. de Cardenas says: "The sovereign Pontiff, in this condemnation, does not speak of the case in which it is clear as daylight that masters commit an injustice, either by diminishing the salary that justice obliges them to give, or by not paying the price agreed upon.

"In fact, in so evident a case of injustice, it is permitted to servants or others, to get through justice the remainder of the salary due them; or, if not possible, to take justice into their own hands, and use secret compensation." (Page 866.)

And J. Taberna, while bowing respectfully, does not hesitate to write: "The one who judges that he is not paid enough, may compensate himself secretly, if he is justly sure that more is owed him." (Page 374.)

Is not this the very condemned proposition?

Ans. Yes; because the judgment is unjust, being based on the false presumption of a fact, and does not oblige in conscience. In matters of right, we must always obey the judgment; unless the law or the judgment should be evidently false.

However, it would be different, setting aside the scandal, if the judge is certainly decided about a fact upon which he looks as true; moreover, the judge has not the power to change the property, and the one who gained the suit, after having discovered the error, cannot keep that which has been paid over again to him.

625.—Ques. Is it a grave sin and against justice, to compensate one's self, without first having recourse to the judge?

Ans. 1. No, not against justice, in principle, provided one takes nothing more than what is owed; and so, one is not under obligation to make restitution. The reason is that, after this compensation, equality is re-established. I have said, in principle; because a prejudice on the subject of a thing determined might result to the debtor.

2. In general, there is no grave sin; because no scandal results from it ordinarily, nor any grave disorder for the State.

3. There is no sin, if it is difficult to have recourse to the judge, if there is danger of scandal, or extraordinary expenses, etc.; because then the recourse is morally impossible.

THIRD PART.

On Restitution

Section 1. Restitution in general.

CHAPTER I.

Obligatory Restitution.

Restitution consists, so far as the name is concerned, in replacing a thing in its first state; its object is, to repair the wrong done to others' property.

626.—Restitution for itself, or at least in the desire, is absolutely necessary to salvation, in principle, if it is a a question of a grave matter. . . .

Ques. Can we make restitution with a different kind of property?

Ans. No, according to the more probable opinion; because there is no comparison between properties of a different order, and no compensation can then be given. One could never arithmetically compute what ought to be restored, there being no common measure between properties of different orders. . . .

However, by vindictive justice, it may happen that a judge or a superior requires that, for an injury to a certain property, one should give something of a different kind; but according to the more probable opinion, this is a penalty, and not justice. Besides, the wronged person has the right to denounce his offender, and to receive money for not denouncing him; for instance, a violated woman can traduce before the Court the guilty person, or exact money from him in order to renounce her rights. . . .

631.—Ques. Is a thief, having stolen a large sum of money, obliged, under heavy penalty, to make restitution of the whole sum?

Ans. No, he must restore only what constitutes a grave matter; because after this, the amount retained is no more a grave matter. One may be obliged, under heavy penalty, to restore a slight matter, but the obligation does not come from the slightness of the thing, but from the grave quantity. . . .

CHAPTER II.

The Roots of Restitution.

633.—They are the causes for which one is obliged to make restitution. They have a treble origin: 1, the acceptance of another's property; 2, for a wrong unjustly done; 3, for an unjust co-operation. The last can be assimilated with either of the preceeding ones; but it shall be treated by itself, in order to establish a greater distinction between what is to be said about each one.

ART. I. The acceptance of another's property. . . .

SECTION I. The owner in good faith. . . .

SECTION II. The owner in bad faith. . . .

646.— Ques. Must a thief make restitution for having stolen a thing which would have been lost anyhow?

Ans. Yes, deducting however the expenses and the price of the work done to save it; because, though being in peril, that thing had not ceased to belong to its master.

Except, according to many, by the probable opinion, if the thief consumes the thing in peril; for instance, some food or drink, which were going to be destroyed in a fire; because the thing unsaved would be of no more value to the master.

Several extend this exception to the case in which the property snatched from peril is consumed right off; for instance, if one takes wine which is going to fall into the possession of the enemy, and drinks it among the family and friends.

647.— Ques. Is a thief obliged to make restitution if the stolen thing is lost in his own house?

Ans. 1. Yes, absolutely. . . .

. . . . . .

3. No, if the property would have been lost as its master's, in the same time and in the same case, by some intrinsic defect; because there is then no prejudice to the owner. According to the more probable opinion, it would be the same case, if the property came to be lost in the same time and was exposed to the same danger as when in the thief's possession; for instance, in the same fire, or public calamity. The reason is, that the theft has not been the cause of the damage, the thing being fated to be lost in the same way and at the same moment.

By the French and Roman code, in whatever way the thing is lost when in the hands of the dishonest possessor, the latter is obliged to make restitution; but it does not seem that he should be obliged to do it before a judgment; unless, by natural rights, he is evidently under the obligation to do it. . . .

649.— Must a thief, besides the capital, restore also the interest?

Ans. Yes, if he is sure, or if it is presumable that the possessor would have made that gain; because he must be indemnified. It is different, according to the probable opinion, if one is not sure of it. . . .

SECTION 3. The owner of doubtful faith. . .

ART. II. Unprofitable Wrong-doing.

657.—This is doing wrong to others, injuring the property of others, without any profit to one's self by the act.

In this act, there are two faults: the theological fault, which includes an offence towards God, in other words, which contains a formal sin, mortal or venial; and the judicial one, which consists in negligence, the cause of the wrong, whether it is formal sin or not. . . .

658.—I. The author of the injury must restore: 1, the entire equivalent of the wrong done; for instance, if he has set fire to a house, the value of the house; 2, the full equivalent of the damage foreseen, besides the prejudice caused. . . .

659.—II. Three conditions are required in order that the prejudicial act should compel restitution: that it is unjust; that it is the efficacious cause of the damage; and that it should be theologically condemnable, in other words, that it should be unjust; in a manner true, efficacious, formal. . . .

660.—A cause only occasional of prejudice, is not sufficient to compel to restitution; because it is not an efficacious cause, but only the occasion of an efficacious cause. Thus, if, on the occasion of a theft committed by yourself, another is accused and condemned, you are not obliged to make reparation for that wrong.

661.—Ques. Is a theological fault sufficient to oblige to restitution for a wrong caused to another by detaining his property, by virtue of a contract, for instance, a lease, a deposit?

Ans. The opinion which seems more probable absolutely affirms it. . . .

662.—Ques. Is a theological fault sufficient to oblige to restitution for the wrong done to another in fulfilling the duties of one's charge, as in the execution of a quasi-contract; for instance, if a physician gives by mistake an injurious potion to his patient?

Ans. Yes, according to the more probable opinion. . . .

663.—Ques. If, doing some forbidden work, we cause an injury accidently, are we obliged to make reparation for that injury?

Ans. No, because that injury is not voluntary, not having been foreseen. No matter if the act is illicit, justice has nothing to do with it. If an ecclesiastic, in hunting, in spite of the church's defence, kills a man instead of a beast, he is no more reprehensible than a layman. And even the prejudice caused by accident must not be repaired, though it results from an unjust action, it having no relation to it. So, we owe no reparation if we killed Titius, not seen by us and not known to be there, instead of Caius, the one we wished to kill.

664.—Ques. Are we obliged to make reparation for the wrong done by mistake, wishing to injure another; for instance, by setting fire to Caius' house, mistaking it for that of Titius?

Ans. Yes, seems the right answer; because the three conditions required for restitution are here. Do not say that your action was not unjust, relatively, to Caius, because you wanted to destroy a determined thing. Now, by destroying it, you impose on yourself the obligation to compensate for the damage. No matter to whom it belongs; the question is not about the name, but about the object. Some deny it, however, (St. Alphonse, Lugo, Lacroix) because the act has not been voluntarily perpetuated towards the wronged person, coming from an involuntary ignorance of right. This reason seems to have but little value.

665.—Ques. What is the case of one having caused a grave prejudice through a slight fault; for instance, through carelessness?

Ans. He is liable for nothing, according to the more probable opinion. He cannot, in fact, be under obligation of a grave penalty; because a grave penalty would not be in proportion to a slight fault; nor under a light penalty, because a light obligation is not in proportion with something of gravity. . . .

666.—Ques. If one thinks, by unconquerable error, that the prejudice caused is much more considerable than it really is, are we under obligation to restore the whole, if later, the true value is known; for instance, if we throw into the sea a precious

stone worth a hundred francs, thinking it is worth only ten francs?

Ans. According to the probable opinion, we must make reparation only for that which one thought to destroy; because, what is ignored in an invincible manner, is not supposed to be a wrong willingly done.

667.—Ques. Must a master make reparation for the damage caused by his animals?

Ans. 1. Yes, if by theological fault he has neglected to look after his animals. Because, every one, by natural right, ought to watch and prevent them from damaging another's property.

2. But if there is no theological fault, he is not obliged to do so before a judgment.

Ques. Ought we to make restitution if, showing bad example, we induce others to wrong doing, having foreseen the evil?

Ans. The more probable opinion denies it, because example is not the cause, but the pure occasion of the wrong. Because the bad action does not tend, in principle, to excite others to imitate it. Then the others determine themselves to commit the evil deeds. . . .

668.—Ques. 1. If we are in doubt that we have been ourselves the cause of the prejudice, is restitution obligatory?

Ans. 1. If the existence of the prejudice is doubtful, more probably there is no obligation.

2. If the influence of the action over the evil done is doubtful, there is controversy, and two probable opinions. . . .

669.—Ques. Must we make reparation for the wrong done to some one, occasioned by an unjust action of our own; for instance, if you had stolen something and he should be accused of the theft?

Ans. 1. No, certainly, if the wrong has not been foreseen.

2. No, according to the more probable opinion, even if it has been foreseen; because your action, done with the only prevision of the wrong done, is not the cause, in principle, but only by accident.

3. No, according to the probable opinion, even if you have done so with the intention that he should be accused of it;

because that action is only the accidental, not the original cause of the wrong, since it had no efficacious influence on it, by its nature. . . .

672.—Case I. Didacus places in a corner of his house, where nobody was to pass, a very precious vase, belonging to Caius, expecting to put it the next morning in a safer place. But Bazile, entering during the night without any light, knocks the vase down and breaks it. *Quid juris?* — Ans: Neither Didacus nor Bazile are to be held for reparation; because there is no theological fault from them; neither thought of harm or danger. They would not be under obligation even if they had thought of a remote danger; because, in matters of morals, we must not mind pure possibility.

Case II. Quirinus, wanting to steal some cloth, enters a store during the night and lights a candle, taking good care, however, to prevent a fire; but a cat upsets the candle, which, falling on straw, sets it on fire, and the house is burned; the thief runs away and escapes.—What is to be thought of Quirinus' case?

He is under no obligation to make restitution; because he has not foreseen the danger. He is not even obliged to pay for the clothes he wished to steal, even had he ran away with the goods; because the damage is involuntary, since the fact of stealing the cloth is not the cause of the damage, and the fact of carrying the candle does not induce the danger of fire, when reasonable precautions are taken.

Case III. Pomponius, blinded by revenge and not being seen by anyone, shoots at Maurus' goat, quietly browsing; but he misses it, and instead, kills Mairus' cow, resting behind a hedge. What of this case? He owes nothing. Nothing for the goat, having missed it; nor for the cow, not foreseeing the misfortune. —*Quid.* If the cow had belonged to the same master? The difficulty is increasing, the aggressor truly striving to wrong the person; because, though he does not destroy the animal he had in mind to kill, as in principle he seeks to injure his enemy, his action causes him a formal prejudice. However rigorously, in principle, he may be excused, according to the more probable opinion, if he has not at all foreseen that evil, not even confusedly, one

can say that it happened purely through accident, and the intention to do injury to some man does not make the prejudice caused on the subject of a thing unknown become voluntary.

Case IV. Babin, by dint of prayers and flattery, but without having recourse to any knavish tricks, prevails over Roger, on his death-bed, to tear up a will made in favor of Paul, in order that he (Babin), or some relations of his, should become the heir. Now, Babin not only does this for his own or his friend's advantage, but also from hate for Paul.—Ques. Is he guilty of injustice?—Ans. Not at all; because, though he has sinned gravely against charity, he did no violence or injustice, not having violated any strict rights of Roger. So would it be for the one who, through hate, would have prevailed on Roger to change his mind and make his will in favor of another one than Paul, or choose another heir in his stead.

ART. III. On unjust co-operation.

SECTION 1. One who orders evil.

673.—He must make reparation for all the wrong he commanded to do: it would be different, if he had only approved of the evil done in his name. . . .

674.—Ques. Must the one who gives the order make reparation, if he changed his idea before the prejudice has been caused?

Ans. No, if the proxy knew of it before the execution of the mandate; it would be different if he did not know of it, or if it came too late to his knowledge; because, in the first case, the one who gave the order did not have any influence on the evil, whilst in the second case he had some.

Ques. Must the one who gives the order make reparation for the injustice which the proxy caused to another by an invincible error?

Ans. No, because the true cause of the prejudice is the error of the proxy. This is the common opinion, unless it proceeds from the nature of the prejudicial action itself, or from its necessary results, so that he has been forced into an error which he could scarcely foresee; then the one who gave the order has been the cause of the error, and the prejudice resulting from it. . . .

SECTION 2. One who advises evil.

676.— . . . The counsellor is not obliged to make restitution, if the author of the evil would have caused the prejudice in the same manner without his advice; because that advice has not been efficacious for the prejudice.* . . .

678.— Is the one who only advises the means of injuring another obliged to make reparation?

Ans. No, if the means are purely accidental, such are, generally, the circumstances of time, place, and manner.

Ques. Ought one to make reparation, if he advises that the injury be done more quickly?

Ans. No, if it is certain that the other was determined to do wrong.†

SECTION 3. The one who gives consent.

681.— He must make reparation for each time he has given, knowingly and freely, his consent or advice, from which directly resulted the wrong done to another; in other words, every time he gives an efficacious consent causing prejudice to others. If his consent was not efficacious, he could not be held to make reparation, having given his consent to the evil in an affective, and not effective manner. . . .

SECTION 4. The flatterer. . . .

* Escobar: "Can you advise Antonio, getting ready to steal some wheat, to steal rather, through friendship for you, a sum of money, because you desire to buy that wheat from Antonio? or could you advise somebody who wishes to steal something from Peter, or from John, not being decided to steal from one rather than from the other, to steal from Peter, because John is your friend? . . .

"I believe more probably that such a counsellor, would not be obliged to make restitution,—such is Sanchez's opinion." (Page 365),

† Trachala: "You ask me if you are obliged to make restitution in a case in which some one, being disposed to commit a theft, receives encouragement from you, by advice or exhortation, to commit that crime with more promptness and ease?

I answer negatively, with probability.

But what would have been the answer if you had been only the material cause of the damage? For instance, if you had held the ladder while the thief was stealing, though he could have gone up the ladder just the same if you had not held it. I answer, that you are under no obligation. It is also the opinion of Laymann." (Page 391.)

SECTION 5. The receiver of stolen goods. . . .

SECTION 6. The participator.

There are two kinds: the one participates in the plunder; the other, in the guilty act which procures it.

686.—The first one must restore what he has received and what he detains.

The second one, who co-operates with others, in a mediate or an immediate manner to do the evil, must restore, in general, every time that his co-operation has had a real influence on the substance of the prejudice. . . .

687.—Ques. In the matter of justice, does one permit, and at what moment, an immediate co-operation to the prejudice?

Ans. . . . For temporal fortunes, three cases are admitted, in which, in consequence of a grave fear, co-operation is permitted; because the owner is not supposed to oppose it reasonably: 1, if the co-operator can and will make reparation for the prejudice; 2, if the grave prejudice would have been caused just the same by the principal author without that co-operation; 3, if the loss is slight for the owner, who, by charity, ought to suffer it willingly. . . .

SECTION 7. Those who keep silent, make no opposition, do not divulge; or, negative co-operators.

692.—Ques. Must a superior make reparation for the wrong done by his inferiors?

Ans. 1, Outwardly: Yes, after the Roman and French codes. . . .

2, Inwardly: 1, Yes, if the silence of the superior is the equivalent of a tacit advice; 2, No, if there is no theological fault; 3, No, according to the probable opinion, although he has sinned gravely by not preventing the wrong, if his silence had no influence, above all when it is a question of wrong done to others than to his inferiors.

693.—Ques. Is restitution obligatory if one receives money from a thief to keep silent, when duty does not command him to call for help?

Ans. No, according to the more probable opinion, at least in principle; because justice does not oblige you to call for help. Likewise, if they give or promise some gift to keep you quiet. . . .

CHAPTER III.

On the Circumstances of Restitution.

ART. I. How much it is necessary to restore.

694.—The quantity to be restored must be measured by the quantity of the stolen object, of the wrong committed, or of the influence on the wrong caused to others. . . .

695.—Any co-operator concurring in an efficacious manner in the wrong done, so that one could morally impute to him all the evil, must make restitution for the whole.

696.—Ques. Is one obliged to make restitution for all when the co-operation has influence on the individual wrong, but is not sufficient or necessary, or does not come from a direct plot; for instance, if four carry away a beam which three might have carried?

Ans. No, because the only reason for the obligation is the influence on the wrong act.

697.—Ques. Are you obliged to restore the whole, if your action has been sufficient to cause all the prejudice, but not at all necessary, nor coming from a plot? For instance: if you and several others set fire to a house at the same time?

Ans. There is controversy: yes, according to the probable opinion, and even more probable, of many; no, according to the probable opinion of others. . . . St. Liguori finds both opinions probable.

ART. II. To whom is it necessary to make restitution? . . .

ART. III. In what order is it necessary to make restitution?

That order may be considered either in relation to those who must restore, if several have co-operated; or relatively to those to whom the restitution must be made. . . .

703.—. . . The one who advises and the one who consents, are not obliged, in principle, to restore before the one who executes: this one is the first to make restitution; because, outside of the one who gave the order, he is the principal cause of the prejudice. . . .

ART. IV. How is the restitution to be made? . . .

708. We may say, in general, that it is necessary and sufficient if the restitution be made in such a way that justice shall be satisfied and the injured party indemnified. . . .

ART. V. When is the restitution to be made?

713.—As for the things owed, they must be restored as soon as possible without any great inconvenience. . . .

CHAPTER IV.

Cases Which Exempt From Restitution.

715.—Excuse for a time: 1, physical powerlessness, or impossibility of all sorts, which happen in extreme or even very grave necessity to the debtor or to his family; 2, moral powerlessness, or grave difficulty to make the restitution, when it cannot be done without great inconvenience; for instance, without losing a situation justly acquired; because then, there is a true impossibility to make restitution: since, in moral things, we call impossible what is difficult, and that which cannot be done decently and honorably. Thus, if a man of the nobility cannot restore without depriving himself of his servants, horses, arms; or one of the first citizens, without taking a manual trade to which he is not accustomed, they may postpone the restitution, and pay little by little what they owe.*

*Marotte, in his "*Petit Chatechisme*," reproduces, for the use of little children, these dangerous distinctions, all in favor of the thieves:

Ques. "What are the causes which permit one to postpone restitution?

Ans. "These causes are: 1, physical powerlessness; in other words, the condition of the debtor, who is in extreme need; 2. moral powerlessness, in other words, the situation in which the debtor could not make restitution without notably falling from a position justly acquired, without plunging himself and family into poverty, or *exposing himself to the danger of losing his reputation.*"

716.—Excusing forever; . . . remittance of the debt, . . . compensation; . . . thirty years' prescription.

718.—Ques. Could some one, overwhelmed with debt, enter a monastery; and has he got rid of his debts, once he has entered it?

Ans. 1. No, if the payment can be promptly effected. It would be different, according to the more probable opinion, in principle, if a notable time must elapse. However, if the debts are considerable, such an instance, though valid, is forbidden by the Canon Law.

2. The Church is not obliged to pay those debts out of her own property. A monk is obliged to pay his debts out of the property he had before his entrance into religion; or out of what he inherits by will, if he took only simple vows. It would be different, if he had taken solemn vows. . . .

722.—Ques. Does a reasonably presumed allowance excuse from all restitution?

Ans. Yes, at least, according to the more probable opinion; because, to detain the property of others, or not to make restitution for it, is an unjust action only if it is against the will of the owner.* The allowance does not occur in spite of him, if it is done by his permission reasonably presumed. But it is necessary to guard against abuse, in order to prevent great injustice.

SECTION II. Different kinds of restitution.

CHAPTER I.

RESTITUTION FOR INJURY DONE TO THE WELFARE OF THE SOUL.

. . . . . .

In his *Cours Complet*, he imagines a new cause, not lacking in originality: "Another legitimate cause for postponing restitution, is when one foresees that the creditor will make an abuse of it for his own harm, or to the detriment of another."

What a touching solicitude of the thief for the interest and salvation of his victim!

* "*It is not a mortal sin* to take secretly from some one what he would give if it was asked of him, though he does not wish it to be taken in secret; and it is not liable to restitution."—Emm. Sa.

CHAPTER II.

Restitution for Injury to the Body.

ART. I. Restitution for homicide.

725.—Homicides (those who have wounded somebody), and their heirs, must make restitution to the mutilated or wounded ones, for all loss resulting from that mutilation or homicide before his death. But, according to the more probable opinion, they ought to compensate nothing for life or limbs; because, in strict rights, those things cannot be subject to any estimation.*

If the person died before, the restitution must be made to his heirs: or, if there are none, to the poor. . . .

726.—Ques. Is a homicide obliged to make restitution to the wife and children of his victim, even for future prejudice, if they can shift for themselves?

Ans. There is controversy. The more common opinion says Yes; the probable opinion says No.

Ques. Must we pay something to the creditors of one's victim?

Ans. No, according to the more probable opinion; though the murderer should have foreseen it, provided he has had, directly, no intention of wronging them, since this wrong is but an accidental consequence. . . .

Ques. Must one who kills another in a duel make reparation?

Ans. No, according to the more probable opinion, no matter whether he is the provoker or the provoked one. . . .

ART. II. Restitution for rape and fornication.

728.—For a purely natural injury—for the destroying of the body's integrity—for having caused the loss of purity, restitution is not obligatory, at least, according to the more probable opinion; because such injury cannot be compensated with money.

729.—Ques. Must the ravisher marry the young girl he violated under promise of marriage?

* It is in deduction of these principles that, in the opinion of Lacroix, Casuists agree that: "The one who killed a man who was soon to die a natural or justly deserved death, is not obliged to make restitution, since he is not supposed to have done any great damage." (Page 388.)

Ans. The first opinion affirms it. . . .

The second, followed by a very few, denies it.

The first is common, and must be followed; however, it admits several exceptions discussed by St. Liguori. Thus, there will be exemption: if sorry consequences from that marriage are apprehended; if a great dishonor results for the family from the difference of condition, etc. But then, one is obliged to give a dowry to the girl.

Ques. Does the ravisher owe something to the girl's parents, if she freely consented to the act?

Ans. No, according to the more probable opinion; because none of their strict rights have been violated, and they cannot prevent their daughter from giving up her right, relatively, to temporal injury.* . . .

ART. II. Restitution for adultery.

The obligations of both adulterers ought to be examined according to different circumstances, as to whether the adultery has been fully voluntary in both participants, or not; and if it has caused injury to the family, or not. . . .

732.—Ques. Is a woman obliged to reveal her crime, if there is no other way of repairing the evil?

Ans. No, in general. . . .

733.—Ques. What is to be done when there is doubt if the child is legitimate, or illegitimate; or if he proceeds from this adultery, or from another one?

Ans. According to the more probable opinion, adulterers are under no obligation; because they have no knowledge of the injury caused. Other say, that reparation must be made proportionally. . . .

Ques. Must a son believe his mother, who tells him, under oath, that he is illegitimate?

Ans. No, because, by right and common sense, no one is

*Ques. "What is to be expected as a restitution from one who has caused the defloration of a virgin?

Ans. "If the girl has consented, nothing but to do penance; because she had the right to concede the use of her body, and the parents cannot prevent it."—F. X. Fegeli, 1750, (Page 294.)

obliged to believe one witness, even if there is no doubt whatever of his good faith. . . .

734.—Ques. If the children of rich adulterers or fornicators are sent to the House of Refuge, must they pay for their expenses?

Ans. There is controversy. The first opinion, more probable and more common, affirms it. The second one denies it. . . .

CHAPTER III.

On Restitution for the Injury Caused to Temporal Fortune in Particular Cases.

ART. I. Of Taxes.

736.—Subjects pay an income-tax, out of their own properties, to the government or sovereign, to cover the public expenses of the State.

There is the direct tax, and the indirect one. . . .

737.—1. The action of establishing the income-tax is incumbent on the legitimate and supreme authority; which alone has the right to exact from the citizens what is necessary to the public good.

2. The sovereign has the right to establish taxes; because his power extends to everything relative to the public good. . . .

4. Laws relating to taxes, considered in general, are not purely penal, but oblige in conscience. . . .

738.—Ques. Must one constrain the people to pay indirect taxes, and compel restitution for frauds committed?

Ans. The solution is difficult.

744.—Ques. Is it a sin, and is reparation obligatory, if one imports prohibited goods?

Ans. 1. As for the restitution, no, absolutely; because no strict rights are violated, neither the sovereign's rights who did not reserve these goods, nor impose duty on them, nor any particular rights, nobody having the privilege to sell them.

2. As for the sin, there is controversy. . . .

ART. II. Of injury caused on the occasion of military service.

747—Ques. Under what obligation are refractory conscripts?

Ans. 1. By obedience, or legal justice, they must join their corps. Except: 1, if there was a grave danger for their salvation; for instance, if they had not the facility of confessing, as it happens in some pl ces; 2, if, when reintegrated, they were going to suffer the penalty of death, imprisonment, or some other grave penalty; 3, if the war is evidently unjust.

2. Deserters are under no obligation to make restitution, if the law takes nobody in their place; because they do not wrong commutative justice, since they do wrong to no one.

749.—Ques. Under what obligation are conscripts who run away, or obtain exemption under false pretence?

Ans. If the law does not fill their places, they sin against legal justice, but they owe no reparation; but if the law takes somebody:

1. Those who bribe magistrates or doctors, in order to be declared improper for service, must make reparation.

2. And also, according to the more common opinion, those who deceive magistrates with lies, frauds or deliberate mutilations done beforehand.

However, several authors, whose opinion seems probable enough, deny it; because these conscripts are not the efficacious cause of the departure of others, their dupery inducing neither *physically* nor *morally* the magistrates to take others. . . .

ART. III. On confiscation of property in the revolutions in France.

SECTION I. *Ecclesiastical property.*

750.—The Church's property has been pillaged (*direspta*), some by the governments, some by individuals. . . .

751.—Those, who have usurped the Church's property, have committed a grave sin, if they did it of their own authority, and are obliged to restore it; for they are thieves, and have never been pardoned. . . .

SECTION II. Individual property.

752.—The property of emigrants, unjustly expelled, has, like the Church's property, been confiscated by the State and by individuals. . . .

753.—Individuals who, of their own authority, have confiscated this property, are under obligation to make restitution, and cannot invoke prescription, since they have been possessors in bad faith. . . .

Cases of Conscience on Justice and Right.

On Patrimony.

Case I.

Of the Property of Children.

Leopold, a merchant's son, after the death of his father, remains in the paternal home, and conducts business so skilfully, that in eight years he gains two thousand pounds. At this time his mother dies without making a will, and he wants the largest part of the fortune. But two young and invalid sisters of his, who had gained nothing themselves, object to his greed, and ask for an equal share; as, by the law, when there is no will, the rights of children are equal. Leopold, having protested in vain, keeps secretly for himself an important sum of money he had in his possession.

Ques. Is Leopold right in coveting the greatest part of the inheritance; and, after the refusal of his sisters, can he justly compensate himself?

Ans. Natural right commands that Leopold can demand the greatest part of the money he gained himself, for this seems conformable to equity; because that enormous gain realized does not proceed only from the money belonging to the family, but from the particular skill and extraordinary work of Leopold, and not from the sisters. Besides, the association of brother and sisters, at their father's death, relative to the paternal inheritance, left intact in order to continue the business, seems to be likened to a contract of commercial association. Then, it is equitable that the one who, in the contract, brings more money and work, should also have a larger part in the profit. Then, Leopold, having brought not only a larger sum, but also more work and skill,

should have a larger share in the gain in question; for, although civil law does not make any difference in such a case, at least it seems to authorize a certain compensation, in proportion to the unpaid extraordinary work of one of the associates, as estimated by an honest third party. Then, Leopold can ask a compensation from his sisters. Now, if he has evidently a right to a compensation, rigorously he can procure it; secretly, if he has no other way of claiming it.

Case II.

Of the Property of Children.

Marius, a wine-merchant's son, is sent by his father, an aged man, to many places, to buy wines. But Marius, a clever man, buys at a very low price, and makes his father believe that he has paid a good deal more for it. So, with the gain thus realized, and also with the economies he made in his travels, he buys a barrel of wine on his own account, which he sells secretly on his return, and realizes a profit of fifty pounds.

Ques. Is Marius obliged to make restitution for that money, or part of it?

Ans. 1. Marius is under obligation to restore the money he made by deceiving his father on the price of the wine; because in no way can he keep it justly; for, if he had the luck to buy at a low rate, being his father's representative, he owes him the benefit of it, being already paid to make the business prosperous; except the case in which he would have shown an extraordinary amount of work and skill.

He is not obliged to give back the money he made by economy; because his father owes him an honorable living proportionate to his condition. But if he saved something on it, and took better care of his purse than his stomach, his father cannot reasonably find fault with it. For, if a merchant's son, for instance, meets along the way a traveling companion willing to pay for his expenses, he is not obliged to give back to his master the money he would have had to spend for general expenses. Then, even so, a son of a good family is not obliged to remit to his father the money he saved by living with economy.

3. He is not obliged to give back the fifty pounds. . . .

Case VI.

Of Occupation.

Fortunatus, after the taking and pillage of a city by the soldiers, buys for a song from one of them a lot of clothing. But later, looking at them carefully, he finds a considerable sum of money sewed up in the lining of a coat; attributing this lucky discovery to the goodness of Providence, he keeps it without any remorse of conscience.

Ques. Can Fortunatus keep the money found in the coat; or must he give it back to the soldier, or to the owner, if he knows him?

Ans. 1. Fortunatus is not obliged to give the money back to the soldier; because even if the latter has justly acquired the clothing, for instance, in a just war, he has not acquired the possession of the money hidden in them, and it has no relation with their price; since the soldier, being ignorant of its existence, cannot pretend to the possession of the money. Now, what you ignore you do not desire, nor consequently possess. 2. If he should find the true possessor, he ought to give him back the money; for the owner has never renounced the possession of his property. The soldier's booty exists rather in practice than in principle, and does not include the hidden money, and it is not opposed to the civil possession by the first master. However, one would not be obliged to give back the money even to the proprietor, were he known, if the coat had been taken in a just war; because, in this case, the possession having been acquired through the enemy was not an unjust one.

Case VIII.

Of Occupation.

The hunter Attilius kills a hare in Caius' open field. The proprietor, present by chance, prevents the hunter from carrying away his game, and takes it himself, and disposes of it with his friends.

Ques. *To whom belongs the game?*

Ans. The game belongs to the huntsman who acquired, by killing, the property of it, although he took it in an illicit manner, without the owner's permission. Then the latter acted unjustly by taking and eating the game; for it was not a production of his field, and he must restore the value of it. His permission was necessary, but it was his duty to give it; and if Attilius has caused some damage in Caius' field, he must indemnify him.

Case XII.

Of Things.

Gaudentius learns that a treasure is hidden in a certain field; he buys it at the ordinary rate, digs in the earth, and, O happiness! he discovers the treasure, and keeps the whole of it for himself.

Ques. Did Gaudentius act unjustly in buying the field at the ordinary price, though he presumed, and even was certain, that a treasure was hidden in it?

Ans. Gaudentius can keep the treasure, because, in reality, he found it in his own field; and he was not obliged to pay more for it, because the treasure is not assimilated to any production of the field. Do not object the presumption, nor even the certainty of the thing, because this is quite accidental, and does not cause any injury to the seller; just as an apothecary need not pay more for a load of hay because some medicinal plants are in it.

Case XVII.

Of the Prescription.

1. Sylvain has, for nine years, enjoyed the half of a field, through inheritance; the field belonging to two masters, Peter and Paul.

Peter discovers, looking over some documents, that he has a right to a part of the field, claims and obtains it before justice. Six months later, Paul claims it also; but he is opposed by a right of prescription.

2. Hippolyte occupies, in good faith, a house belonging to two brothers, John and Jacob. After nine years, John claims possession with a document altered with erasure, but obtains nothing.

Ten years later, by a lucky chance, Jacob discovers the authentical document without erasure, which proves the validity of the deed. Immediately he claims the house; but Hippolyte opposes the prescription.

3. Medard possesses in good faith, for nine years, a field, which he gives to his heir Gustave, when he is at the point of death. Two years later, Victorin proves that the field belongs to him, and claims it. Gustave refuses to give it back, invoking the prescription.

Ques. 1. Is Sylvain's prescription valid, in the first case?

2. What of Hippolyte's in the second?

3. And Gustave's in the third?

Ans. Question 1. That depends: if the right of both masters is founded on the same common deed, Sylvain cannot oppose prescription, because his bad faith ought to be proved in judgment. But if they have two different deeds, it may happen that Sylvain is in good faith, and opposes prescription.

Ans. Question 2. Hippolyte is right in opposing prescription, for, in principle, his possession has not been interrupted; because, although there has been a suit at law, the adversary has lost it. Add to this, that the authentical document brought in by Jacob has been found too late, the time fixed by prescription being elapsed.

Ans. Question 3. The prescription of the heir Gustave is valid, because it continues and completes the legal time, which commenced with the first possession.

Such would be the case also if Gustave had acquired his field by a deed of sale; for one may add together the time of the different possessors in order to have prescription, provided all were in good faith in detaining it.

Cases of Conscience on Injustice and Theft.

SECRET COMPENSATION.

Case I.

The Gravity of Theft.

Nestor, in his passion for stealing, takes advantage of every occasion, and, tempted by the devil, steals either from the rich or from the poor, three, four, five, or six francs. One day he takes twelve francs from a very rich prince; but, a little after, having heard an eloquent sermon, he makes a sincere confession, and asks if he has sinned grievously in each case.

Ques. 1. When is there a grave matter in a theft?

Ques. 2. Did Nestor sin gravely in these cases, especially by stealing twelve francs from a prince?

Ans. Question 1. According to the common opinion, the matter in a theft is relatively grave, but not absolutely in relation to all; in other words, the matter may be grave or slight according to the superior or inferior condition of the victim. A theft of five or six francs constitutes, according to the probable opinion, rigorously, a grave matter in relation to the rich; but a less grave matter is sufficient for a mortal sin if the injured individual is of inferior condition. Thus a theft of a franc, or half a franc, in relation to a poor person, may constitute a grave matter.

Theologians generally pretend, says St. Liguori, that there is a grave sin when the stealing is sufficient to feed a family for a day, according to their condition, including food, clothing, and lodging. But this very obscure and vague rule could not be applied to all thefts. It is necessary to determine a relatively grave matter according to the different conditions of men. . . . It seems that one franc in relation to the poor, and sometimes less

for very needy persons; two or three francs in relation to workmen who earn their living by working by the day; four or five francs in relation to people with a competency; six or seven francs for ordinarily rich ones; and a little more in relation to very rich people. This is the common doctrine.

Ans. Question 2. We can determine by this the gravity of Nestor's sins. He has committed a mortal sin each time he stole six or seven francs, even from the rich, and ten or twelve francs from a prince. As for his other thefts, he must be questioned, in order to clear up the matter, and to be able to apply the above rules concerning the grave matter. Moreover, in practice, often this gravity cannot be determined, and the confessor cannot know if his penitent's sin is grievous or light. He must then depend on Divine justice.

Case II.

Of Small Thefts.

Damase, a peasant, living on Gerard's patrimony, stole from him during several years, and at several times each year, either a little wheat in the harvest time, or a few grapes in the vintage time. However, he never had the intention of keeping up his evil course; but reflecting that these little thefts constitute a grave matter, he asks of his confessor if he has grievously sinned, and if he must make restitution under grave penalty.

Ques. What is to be decided about Damase's case?

Ans. He has not sinned grievously if he had no intention of causing a grave injury; but he must restore, under grave penalty, for he has committed a grave wrong, unless the intervals between these thefts are such that they are not supposed to constitute a grave matter. This supposition may be applied in his case.

Case III.

The Thefts of Children and Servants.

1. Romaritus, the son of a good family, stole from his father, a pretty wealthy man, once eight francs, and after a certain

interval, ten francs, by different small thefts: he spent the whole of the money in gambling and drinking.

2. Quirinus, a servant, stole six francs from his master, a rich man, and several months later he committed several little thefts, of food and drink. In the same month, he stole the value of about eight francs.

Ques. Did Romaricus and Quirinus sin gravely?

Ans. As to Romaricus, he must not be accused of a grave sin, either in the first or in the second case. Not in the first, because, according to the more probable opinion, the grave matter for the child of an honorable family must be ten francs; neither in the second case, because, if ten francs constitute a grave sin for Romaricus, when he steals that sum at one time, the value of fifteen francs in little thefts is necessary.

As for Quirinus, he has sinned gravely by stealing six francs from his master, it is the common opinion of theologians; but not by committing small thefts of food, in principle, as results from what has been said.

Case IV.

Thefts of Wives.

Gerasine, the wife of Ludomire, a rich man, but close-fisted and grasping, not to say avaricious, often steals little sums from her husband to keep her poor and unfortunate mother, though she well knows that her husband would get angry if he knew of it. She steals also to provide for future need; for, as she brought but a very small dowry and has had no children by Ludomire, she foresees that, in the case of her husband's death, she will want the necessary means for keeping her rank in society.

Ques. Did Gerasine sin gravely?

Ans. The prudent wife must not be easily excused, for she has overstepped the limits of human prudence, and has not trusted enough in the goodness of divine Providence. For why such calculation in view of an uncertain future time? Why does she thus gather riches which does not belong to her? How does she know that she will not die before her husband, but a long time after? However, up to a certain point she must be pardoned, if her husband

is old and an invalid, and if it is evident that he will leave nothing at his death to his almost penniless wife; because, in such circumstances, the husband ought to think of his wife. Moreover, it would not be just to condemn a wife who, while her husband would squander his patrimony, would steal some money which she would keep for the future need of her children or of herself, if she held the property in common with the husband.

Case V.

A Tailor's Cleverness.

Genesius, a tailor, very skilful in his craft, knows how to make suits with less cloth than others. and keeps the remainder to pay for his skill. Having an order, from a man of nobility, to buy ten yards of cloth for the making of a suit, he goes to the dealer and agrees with him for a price. But unfolding the cloth, he discovers a few tears; but calculating that, in spite of these, he can make the suit just the same, he obtains a reduction of a third on the price from the dealer, and asks the same pay from his customer for the work.

Ques. What is to be thought of Genesius?

Ans. Our tailor can congratulate himself for his cleverness, without any remorse of conscience; because he has obtained a just reduction from the dealer, and it is owing to his skill that, in spite of the tears, it can make a splendid suit. He does not cause any injury to his customer, for he uses a cloth of good and solid quality.

Case VII.

The Innocent Condemned, Instead of the Guilty One.

Audifax, in the absence of Rudolph, secretly breaks into his house, forces open the safe, takes three hundred pounds, and runs away. Rodolph, coming back, is struck with astonishment at seeing his safe open, and ascertaining the theft he gets angry. But who is the thief? He does not know. Soon he begins to suspect Titius, his servant. The servant is arrested and put into jail. Through unfortunate circumstances, grave suspicions weigh upon him. Witnesses are found, saying that, in the absence of his

master, he was alone in the house. Titius, frightened, makes incoherent and even contradictory answers to the judge. Accused of theft, he is condemned to perpetual imprisonment. Audifax, tormented by remorse of conscience, goes to a priest, avows his crime, and asks of him what is to be done in such a direful emergency.

Ques. 1. Must Audifax deliver himself to justice. Was it his duty to do it before the judgment?

Ques. 2. Is he under obligation to make reparation for the wrong done to the servant?

Ques. 3. What must be the confessor's answer?

Ans. Question 1. Here he is brought by repentance to his confessor's feet, waiting, full of tears, for his sentence. What is the duty of the priest? Shall he oblige his penitent to restore integrally for the evil? Shall he command him not only to give back the stolen money, but also to deliver himself to the judge? Not at all. It is sufficient that he should secretly indemnify Rodolph, and do penance for his sin. I say that Audifax is not under obligation to deliver himself, even before the servant's sentence was pronounced, even though he could have, by this means, prevented the condemnation of the innocent. The reason is, that Audifax has not been the efficacious cause of the condemnation, but simply the occasion, the occasional cause, or the removed cause. Now, no one is held to repair an evil, if he has not been the true and efficacious cause of it. Then . . . The misfortune of the servant must be imputed to the witnesses' and judge's error; but Audifax has not been the efficacious cause of that error; then he is not obliged to deliver himself in order to prevent or repair that evil. Except in the case when Audifax would have foreseen that unhappy result in such circumstances, that the accusation and condemnation were very probably to strike the servant; which does not happen usually.

Ans. Question 2. No, according to what has been said, Audifax has not been the cause of the servant's sentence, but it is the error of the judge. Then, he is not obliged to make reparation. However, charity commands him to deliver an innocent one from a grave penalty, if he can do it easily, without giving himself up.

Ans. Question 3. Generally, in so great an embarassment, the confessor's advice will be of little avail; but it would be prudent to advise him to take steps by himself, or through others, to interest some influential person, who, without divulging the case, could, from the Chief of the State, obtain the release of the innocent one.

Case IX.

A Servant's Ruse.

Ursani, a gourmand, wants for his table the best of dishes, but he does not want to pay the right price for the necessary provisions. Being quick-tempered, he has the habit of getting angry and blasphemous at everything, if he is not quickly obeyed in whatever he desires. His cook is continually between the hammer and the anvil. At last, she finds the means to settle the matter. She buys of the best the market offers at a reasonable price, and feigns to her master that she has bought them cheaper. In order to act so, she takes care to carry about her the necessary money, without her master's knowledge.

Ques. Does Suzanne act unjustly towards her master?

Ans. Suzanne commits no injustice towards her master, for she cannot act otherwise in her situation. However, we advise her to cease the deception as soon as possible; for it is not without danger and seduction; especially, let her avoid lying.

Case X.

Secret Compensation.

I. Augustin is compelled by the judge to pay to Antony a debt which he has already paid. He obeys the sentence, but compensates himself secretly, by taking something from Antony when the occasion offers itself.

II. Albert, a servant, is engaged by Medard to enter his service; he accepts without any agreement as to salary, trusting in Medard's honesty. The year over, he receives wages inferior to those of servants of the same kind. So Albert, without any scruples, has recourse to secret compensation, to make up for the difference between his wages and the least ones of the same order.

III. Marc, another servant, attending to the work of his charge, breaks unintentionally a crystal vase. His master, angry of it,

retains from his wages the value of the vase. Marc indemnifies himself secretly.

Ques. 1. Is Augustin warranted in having recourse to such a compensation?

Ques. 2. Also Albert, to complete the least wages given to such servants?

Ques. 3. And Marc, could he make up secretly for the reduction on his wages?

Ans. Question 1. By natural right, Augustin can have recourse to secret compensation, if he has no other way to get back what belongs to him. He causes no injury to Antony, doing nothing else but taking back his own. Do not reproach the judge's sentence. The judge has no power to give to some one what does not belong to him; and his sentence, founded on an error of facts, is materially unjust. Now, right cannot proceed from injustice, though material.

Ans. Question 2. Rightly speaking, Albert cannot be condemned; for, though there is no agreement, he has perfect right to the lowest wages paid to other servants. So, he claims nothing but his just due.

Ans. Question 3. He is not to be condemned if he has had recourse to secret compensation to indemnify himself, in the case of the involuntary breaking of the vase, without committing any theological fault; because no one is obliged to repair an involuntary misfortune, except inwardly, after the judge's sentence, as we shall see later about unjust condemnation. Then, the master has no right to exact reparation, and the servant is warranted in taking back what he was not obliged to pay for; for Marc could only be obliged by his conscience, or by a judgment. Now, there is no judicial obligation in this hypothesis, there having been no judgment, nor any obligation of conscience; for one is obliged in conscience to make restitution only when the fault has been committed with guilty intention.

Case XI.

Secret Compensation.

Ferdinand owed one hundred pounds to Aurelius. Before the day of the payment, Ferdinand made a friendly call at his debtor's,

and told him he was to send his servant with the money on the next day. Aurelius, full of confidence, gives a receipt to Ferdinand. Having received it, Ferdinand rejoices in having found a good occasion to repay himself one hundred pounds owed by Aurelius' father to his own, and which he had never been able to prevail upon him to pay. Then, as Aurelius claims his money, Ferdinand absolutely refuses it, affirming that he will keep that sum to acquit the debt of Aurelius' father. The creditor claimed in justice the sum, but the debtor Ferdinand said he had paid it, and proved it by showing the receipt; the unfortunate creditor lost the suit, and was condemned to pay expenses.

Ques. 1. Had Ferdinand any right to keep the borrowed money and use the receipt as he did?

Ques. 2. Could he swear that his debt was paid?

Ques. 3. Is he under obligation to pay to Aurelius the expenses of judgment?

Ans. Question 1. Yes, Ferdinand was right in keeping a borrowed sum, and in using the receipt, so skilfully obtained, in order to prove he was clear with Aurelius, because the debts of both parties, being equal, destroy each other. Ferdinand did not act wrongfully by showing the receipt, for it proves nothing else than that the money borrowed by Ferdinand from Aurelius has been paid off, which is quite conformable to the truth.

Ans. Question 2. Yes, also, according to St. Liguori's doctrine, Ferdinand can swear that he has paid the debt, having no other means to get it without wronging some one. For he swears according to the truth and for a grave motive, affirming under oath that he owes nothing, this being the truth, both debts cancelling each other. Then, nothing prevents that affirmation for a grave motive from being confirmed under oath.

Ans. Question 3. No, the expenses must be paid by the one who unjustly arraigned the other before justice, and not by the gainer. Then, Aurelius alone must pay them.

Cases on Restitution in General.

Case III.

Obligatory Restitution.

Carpophorius has contracted many debts, by his high living and his luxurious table; and his wife Bertha has contributed to it a great deal. But the husband died suddenly, and the creditors swooped down from all parts on the unfortunate widow, who possessed nothing from her husband but a large family and a very small fortune. She asks, in tears, of her confessor, if she is obliged to satisfy so many creditors with so small a fortune.

Ques. Is Bertha obliged to pay the creditors out of what remains?

Ans. In principle, Bertha should be obliged to satisfy the creditors, even with the little remainder left by her husband; because, by natural equity, she must indemnify them. However, as she has a large family and a very small fortune, she must be exempted from the obligation of restitution, at least for a time, until she has become richer; because the moral powerlessness in which she finds herself furnishes her a pretext for deferring that restitution. Except in a case in which the creditors, or one of them, should be in the same need; because then the condition of debtor would be the best.

Case V.

A Baker Taken in His Own Meshes.

Monica, having got some bread at the house of the baker Rufus, carries it home, and perceives with astonishment that it is not of the usual quality and quantity. She goes to the chief of police and explains her case. They proceed to the baker's, but

he pretends that he never saw Monica before. "You know me very well," says Monica; "do you not remember that I owe you eighty francs. Here is a bill you sent me a few days ago." The baker denies again. "That is all right," said the police officer, "you do not owe him anything." So saying, the latter takes the bill and tears it up. Then they come out of the shop, leaving in it a crestfallen baker.

Ques. 1. Is Monica acquitted?

Ques. 2. Had the police-officer the right to punish the baker in such a way?

Ans. Question 1. Yes, Monica must not be disturbed, because the remittance took place, at least implicitly, on the baker's part. He does not wish to recognize Monica; then he denies that she is his debtor: thus he implicitly acquits her debt. He can better, indeed, lose the money due, than submit to a greater injury by a judgment. For it is sufficient, in order that there should be a true remittance, that the creditor should have the integral possession of the thing and be willing to remit it. This is just what happened in this case; and do not say that the baker acted by compulsion, and that his remittance is not valid: he acted freely, under the influence of a legitimate fear, for he was always able to choose some after means: in other words, avow his fault, and be punished for it. Then he has really the tacit intention of implicitly discharging that debt.

Ans. Question 2. The officer acquitted Monica in a valid and just manner, for he had the right either to punish the baker or denounce him to the judge; but the baker prefers to escape a just vexation by remitting the debt, rather than suffer the penalty. Then the officer, satisfied with such a punishment, gives up his right to have a greater one imposed upon him by a judgment, and leads the guilty one to inflict a punishment on himself by remitting the debt.

Cases on the Holders of Others' Property.

Case VI.

The Dishonest Holder.

Agathon makes this confession: He stole a horse, bought for two hundred francs by his master, and sold the animal for two hundred and fifty francs.

Ques. Is it sufficient for him to pay two hundred francs to the horse's master, and keep fifty francs as payment for his sharpness?

Ans. Agathon must pay to his master the money he has received; unless he can attribute the benefit he realized to his own ability.

Case VII.

The Possessor Dishonestly.

I. Zachary stole a hundred pounds from Charles. As he is a very clever man, he used them so effectively in business transactions that he soon realized a notable gain. But later, wishing to make reparation for the wrong he has caused, he asks of his confessor if it is sufficient for him to give back the stolen sum; or if he is also obliged to give up the profit made with it.

II. Sisinus stole from Titius a hen, worth fifteen cents; from the hen he gets a large number of eggs. Having some of these eggs hatched, he became the owner of a number of chickens. He sold some of them, and kept the others, in order to have more eggs and more chickens. Indeed, his theft was a very profitable one. But later, in confession, having accused himself of it, he is sentenced by the confessor to give back hen, money, eggs and chickens, or their estimated value.

Ques. 1. Is Zachary obliged to restore the whole of the profit made with the stolen money?

Ques. 2. And Sisinus, besides the hen, must he give back the profit?

Ans. Question 1. Zachary is under obligation to give back the whole of the profit, if the master of the money would have realized a profit equal to it; for instance, if he had used that money in business, which is presumable when the owner of the money is a merchant; or some one using his money in that way. In the contrary case, Zachary would not be obliged to restore the gain, because it might be called the result of his cleverness.

Ans. Question 2. It is sufficient for Sisinus to give back the value of the hen. In an absolute manner, rigorously, he ought to restore the whole of the profit, deducting expenses; because the thing is profitable to the master, and the latter might have made all the profit himself from his hen. However, *moraliter loquendo*, when it is a question of the theft of a common object of little importance, it is sufficient to restore its value; for, according to the common appreciation, the master suffered no other wrong than the value of the hen belonging to him; for, if he had the intention of getting another hen, he could procure it very easily.

Cases on Wrong Unjustly Done.

Case I.

A Guilty Man, Though Being in the Right.

Zephirin made a deep excavation in his field, in order to get sand therefrom. He knows that Andrea very often passes that way during the night, but he does not warn him of the danger. Andrea falls into the hole and breaks his leg; so he cannot attend to his work for two or three months.

Ques. Is Zephirin obliged to pay for the accident?

Ans. Zephirin has sinned gravely against charity by not warning Andrea, but not at all against justice; for he had a just motive for digging a hole in his field. (Then, he owes no reparation.)

Case II.

Threat to Denounce a Guilty One.

Eligius surprises Caius in the very act of committing a theft. He threatens to denounce him, if the latter does not give him one dollar. Caius pays it, in order to avoid the denunciation.

Ques. Can Eligius keep that money either: 1, if he meant seriously to denounce Caius; or, 2, if it was only to frighten him?

Ans. 1. Yes, if he means to denounce him; because any citizen has the right to denounce an offender for the public interest, and consequently to receive something to give up that right.

2. Yes, according to the more probable opinion, though Eligius only made believe. The reason here is, that he has the right to accuse him, and gives up that right, which is payable. Then, Eligius has justly received the money.

Case III.

The One Doing Wrong in Spite of Himself.

Medard enters a shop, with two friends of his, to buy something. While he is bargaining, he steals a gold watch from a tray, believing it was a copper one. Coming home, he looks at it and perceives that it is gold. However, he does not keep it long; for the very same day he lost it, taking a walk about town. A little later, Medard, struck by repentance, wishes to make restitution, but only of the value he put on the watch when he stole it.

Ques. 1. Are we obliged to make restitution for the whole value of a stolen object, if we thought, by an invincible error, that the object was of a less value when it was stolen?

Ques. 2. What must Medard do in this case? Must he restore the full value, or only part of it?

Ans. Question 1. There is controversy. According to the more probable opinion, the one who caused the wrong is obliged to repair only the wrong he thought he had done, provided there is an invincible error; inasmuch as there is no theological fault relatively to the surplus of the wrong, that is to say, of an ignored wrong, such a surplus not being at all voluntary, and not being likened to an injustice properly so called.

Ans. Question 2. Medard is under obligation to restore the full value of the gold watch; because it is hardly presumable that he thought it was certainly a copper one; for there was too much haste in the theft to form a sure conviction on that subject. . . .

But if Medard had been, from the first, in a truly invincible error on the subject of the watch's value, and if, later, having recognized its full value, and having formed the resolution to restore it immediately, he was prevented by some involuntary cause; and if, during this time, he had lost it,—in this hypothesis, according to the probable opinion, Medard should be dispensed from refunding the surplus value unknown at the time of the theft; for he would have exposed on his side the probable opinion in the answer to the first question.

Case V.

Prevented Benefaction.

Gaston had made a will in favor of Fabien, his nephew. But another nephew, Florian, tells the uncle that Fabien has on several occasions spoken very irreverently of him. The angry testator tears up his will, makes Florian his heir, and dies soon after.

Ques. Must Florian restore the inheritance to Fabien?

Ans. Yes, in principle; because Florian, through unjust means, defamation and calumny, has deprived Fabien of his inheritance; for Fabien, as it appears, would have certainly obtained it, being already made the heir; and his uncle, dying soon after, it is not to be presumed that he would have changed his mind. But the answer would be different if Florian, instead of being induced by hate or cupidity, had shown to Gaston, equitably, or for a reasonable motive, grave defects, which would have demonstrated that Fabien was to be judged quite unworthy of the inheritance.

Case VII.

Lamentable Error.

Phileas, a seminarist, blinded by human weakness, commits a grave larceny in the seminary; Albin, his comrade, suspected and accused of it, is turned out of the seminary. Another misfortune befalls him; drawing an unlucky number, he is obliged to go to the army; however, he buys a substitute for two thousand francs. As for Phileas, as soon as he knew of the accusation intended to Albin, full of repentance, he secretly restores the stolen money, and confesses his fault to another priest than his usual confessor, without mentioning Albin's case. Later, a remorseful conscience induces him to tell everything to his usual confessor, who obliges him to repair all the wrong done to Albin, obliged to pay for a substitute; because Phileas might have easily overcome the difficulty, even in not denouncing himself, by informing the superior of his fault, either through his confessor or some other prudent person.

Ques. 1. What ought to be said about Phileas' first confession?

Ques. 2. Has Phileas sinned gravely against justice and charity?

Ans. Question 1. There is nothing to reprove in Phileas' first confession. . . . No matter if he has kept silence concerning the circumstance relating to Albin. . . .

Ans. Question 2. Phileas has sinned gravely against charity, in principle, if he has thought this the easy way to defend his fellow-student. For one is held by charity to prevent the wrong experienced by another, when one can do so easily.

But he has not sinned against justice; because he has not been the efficacious cause, but only the occasion of Albin's misfortune. Then he has been unjustly condemned by his confessor to make reparation. . . . It results upon the whole, that he has sinned against charity, but not against justice.

Case IX.

Mistake in the Wrong Done by Some One.

I. Cocles, rising up during the night, with the intention of ravaging his enemy's vineyard, makes a mistake, in the darkness, and ravages that of his friend Lucius.

II. Curtius gives to Didyme, who asks drink of him, a poisoned beverage, with the intention of killing him. Julius, who was present, in joking, took the cup, drank the whole of it, and died soon after.*

Ques. 1. Shall the one who does the injury be held to make reparation for the evil he has committed without any intention?

Ques. 2. Must Curtius indemnify Julius' unhappy family?

* Gury has not even had the deplorable merit of inventing this infamy. He took it from Lacroix: "If Caius has poisoned wine, and put it before Sempronius with the intention of killing him; and supposing that Titius, having no knowledge about it, drinks the wine and dies, and that Caius allows him to do it through fear of revealing his crime,—in this case Caius is not a murderer, and he is not obliged to repair the harm which resulted in the death of Titius; because the death of Titius is not the voluntary work of Caius, who could not foresee the case, and was not obliged to advise Titius that the beverage was poisoned." (Page 443.)

Ques. 3. Should Cocles be held to repair the damage which he has caused to Lucius' vineyard?

Ans. Question 1. 1. No, if he has not foreseen the evil, even confusedly; because then the evil committed is not a voluntary act of the author, and cannot be imputed to him. For instance, Titius wishes to kill Peter, his enemy, whom he believes is alone; but without injuring Peter he kills Paul, whom he did not see, and whom he had no suspicions of finding there. Titius is not obliged to indemnify the family of Paul; because the homicide was only fortuitous, and not at all voluntary.

2. But if he wishes only to destroy an object, or to deface it, thinking it belongs to his enemy Paul, when it is Peter's property, in this case he is held to repair the damage; because he was willing to destroy a determined object.

However, St. Liguori looks upon the contrary opinion as probable, with Lugo, etc.

Ans. Question 2. Cocles seems to be held to repair the damage, at least according to the common and probable opinion, as it was said above. However, according to St. Liguori's opinion, we cannot constrain Cocles to make reparation.

Ans. Question 3. Curtius is not obliged to repair the evil, if he was able to prevent Julius from drinking the poisoned wine; neither to avow his crime, nor to run the danger of death. The reason of that is: Julius' death was not the effect of Casius' will; because he has not foreseen the case, and he was not obliged to run into danger of sure death to prevent a wrong which he did not foresee. Then it is only by accident, and against Curtius' will, that Julius' death has happened. Therefore, Curtius has not been the efficacious cause, but the simple occasion; since Julius killed himself in drinking a beverage which was not prepared for him.

Case X.

Mistake in the Wrong Done by Some One.

Lupien, in seeking for a way to wrong his enemy Sylvain, finds Sylvain's calf feeding in his master's field, and immediately shoots

at him; but instead of the calf, he kills the marshal's ox grazing behind a hedge.

Ques. Must Lupien repair the damage he has done by unintentionally killing the ox? *Quid.*—If the ox and calf were the property of the same person?

Ans. Lupien cannot be held to repair the damage resulting from the death of the ox; because he had no intention of killing him, and by no means could he foresee this misfortune. He owes nothing, either for the calf which is uninjured, or for the ox; because he killed him unintentionally, and without foreseeing. But, what if both animals had belonged to the same master? The solution ought to be the same; for it would remain true that the evil was not foreseen.

Case XI.

The Fashionable Novice.

Simplicius, young, fashionable, beardless, joyful, arrives at Paris, with the intention of amusing himself. Everything pleases him, and in his happiness he smiles at everything. He had not yet, the imprudent youth, experienced the uncertainty of human things. One day he hires a beautiful horse, in order to give himself a ride on horseback, his greatest pleasure. All yield to him instantly; everybody looks and admires him. But alas! he scarcely arrives in the suburb, when two men, dressed in black suits, like sheriff's officers, summoned him, by saying: "Hallo! friend, stop, that horse does not belong to you." "That is true," answers Simplicius, astonished; "he does not belong to me: I hired him." "Well, well," reply the men dressed in black, "we know it; we must seize him on account of a judgment, with all his master's goods, in order to pay the creditors." At these words the men take the horse, and run away. Sheepish and raging, our fashionable comes back on foot, and tells the story to the owner of the horse; who, astounded, gets out of temper, and exacts from Simplicius the price of the horse.

Ques. Is Simplicius obliged to pay, before judgment, the value of the horse?

Ans. What must we decide on the subject of our fashionable? Shall we condemn him to pay for the horse? Do not hasten to resolve the difficulty. You see this poor fellow punished enough by his misfortune. A young man without any experience, deceived by so much knavishness; does it not appear to you that our pity will be better for him than condemnation? But will you acquit him? You hear the indignant master cry out, complain, vociferate, and protest against your sentence. Then, there is a grave lawsuit to debate. What will Themis do, who is impartial? Who shall be favored? And you, what do you decide? If you will believe me, before the sentence of the judge, we must forgive Simplicius. You are astonished at it, looking for the justice in this solution. Listen a little. The solution is derived by itself from principles. Because one cannot constrain to make reparation, in conscience, only when a theological and grave fault exists, in a grave matter. Now, who will accuse Simplicius of a grave theological fault? Nobody, assuredly; then his cause is gained. But, will you say he is foolish because he acted foolishly? Then, if he is silly, he has not sinned gravely, and he is not held to make reparation. But, say you, he ought to have paid attention to the knavishness of the thieves; then he is guilty.

He ought, that is true, if he had been thinking of it, and if he suspected the ruse before a certain point; now, it is contrary to the hypothesis. Therefore we must acquit Simplicius: at least, according to the more probable opinion.

Case XII.

A Hare for One Sou.

Georgias, a peasant, meets two soldiers in his way, and offers to sell them a hare that he has just killed. For a joke, the soldiers pretend to be willing to buy such beautiful game. Immediately they show to the hunter a new sou, brilliant as a louis. Deceived by its appearance, and thinking it is a louis, Georgias is ready to give them back the remainder of the value in change. "Keep all, friend," say the soldiers. The peasant, leaping with joy, immediately runs away. "Hi! down there, come, come," cry out the

soldiers with all the strength of their lungs. But the peasant turns a deaf ear: the more he hears them cry, the faster he runs, and the soldiers cannot stop him, nor catch him by any means. What is to be done with the hare? It is easy to settle the difficulty; we will eat him, so it will not be lost. The hare was scarcely swallowed, when the poor peasant, having perceived his mistake, comes to the barracks and claims more money. "My friend," say the soldiers, "you are come too late; we had no intention of buying a hare, we had not money enough; we have eaten him to your health. You were not willing to hearken to our call; then, leave us in peace."

Ques. Should the soldiers be held to make restitution?

Ans. No, in principle. In this case we must apply the rules of the possessor of good faith. Because, in this hypothesis, the soldiers being unable to find, and not able to wait for him, regarded the hare as an abandoned object, and ate him. Therefore they have neither the hare nor the price of him, and are no richer than before. They must make no restitution.

Cases on Co-Operation in Order to Injure Others.

Case I.

The One Who Commands.—The Employer.

I. Castor has commanded Pestus, his servant, to steal some money from Jacob; the servant takes more, and keeps the surplus for himself.

II. Another time, moved by a desire to revenge himself, he commands Caius, another servant, to crush the shrubbery in Paul's field. Caius goes out in order to obey, but he makes a mistake and spoils John's field, which is adjacent to Paul's.

Ques. 1. Should Castor be held to make restitution for the surplus of the theft committed by his servant?

Ques. 2. Should he repair the damage made by his proxy's error in the second case?

Ans. Question 1. Castor cannot be held to give back anything for the surplus of the theft, because that surplus results not from the efficacy of the order, but from the proxy's own will. Except the case where he should have foreseen that his servant would exceed his orders; because then, in employing as proxy such a man, he is supposed to be responsible for the damages caused by him.

Ans. Question 2. No, because the damage must be attributed to the proxy only, and not to the employer; there is no mistake, only on the part of the proxy, who, consequently is obliged to repair the damage.

Case II.

The Employer.

Leon commands Titius to steal at night some fruits from Baudouin's field; but the poor fellow, caught by the proprietor's

servants, is beaten, robbed, barely escapes, falls into a ditch and breaks his arm.

Ques. Ought Leon to repair the injury which has happened to Titius?

Ans. Leon is responsible for the injury felt by Titius, by the blows of Baudouin's servants, because he could have easily foreseen this evil in a confused manner. But he is not held to repair the other injuries suffered by Titius being robbed, and breaking his arm by falling into a ditch, because he could not have foreseen them.

Case IV.

The One Who Advises.

Rifax, seeing Bazile's shop open, in the absence of his master, says to Lucius: "If you were to steal something from Bazile, nobody would see you." Upon this, Lucius immediately steals several articles.

Ques. Is Rifax obliged to make restitution, if Lucius does not?

Ans. No, according to the more probable opinion. Rifax is not held to make restitution, because he has been only the occasion and not the cause of the wrong, for he has given neither order nor advice; one cannot explain what kind of influence he has had, for he simply indicated the thing, without attempting to induce his comrade to steal. Therefore, he has not had any efficacious influence in the wrong.

Case V.

The One Who Consents.

Philetus brings an action against Rufus. The judges, five in number, bribed with the presents of Philetus, gives him the case, contrary to equity. But two judges who did not vote in the last place, maintain they are not obliged to make restitution; because, as they say, although they gave their consent to the injustice, their influence was not the cause of it.

Ques. Are the said judges held to make restitution?

Ans. The last two judges, like the others, sinned gravely against justice, and are held to make reparation jointly and severally, if they have voted secretly; because, in that case, there has been only one unjust common action, and we do not distinguish the former from the latter. Yet, if they have voted publicly, openly, they ought to be dispensed, according to the probable opinion, of an injustice *effective* and *efficacious;* because it does not appear that they are the cause of the injustice already sufficiently prepared and determined by the others.

Case VI.

The One Who Consents.

Sylvie, Marius' wife, approves the conduct of her husband when he mingles wheat of an inferior quality with a superior one. The mistake cannot be perceived, and he sells the whole as wheat of first quality.

Ques. Does Sylvie take part in the injustice committed by her husband?

Ans. No, if she has only sanctioned or ratified this injustice; provided she does not incite her husband to do so again.

Case XI.

Negative Co-Operation.

1. Baldus, the father of a family, either by a grave carelessness or by silence, though seeing the wrong, or by indolence, did not prevent the injury done to his neighbors, by his wife, children, or servants, although he could easily have prevented it.

When asked to make reparation for the damage done, he answers calmly: "I have not wronged any one." His youngest son having broken a precious vase which belongs to Caprasius, the latter calls at Baldus' in order to claim the price of the vase. Baldus turns him out of his house with a pitchfork.

2. Sabellus had intrusted his flock to the care of the shepherd Tityre. At one time the shepherd being sound asleep, at another having been tied to a tree against his will, by his comrades, who

were amusing themselves, the flock spoil the field of Hilarius, who asks Sabellus to make reparation.

Ques. What must we think of Baldus and Sabellus?

Ans. 1. Baldus is not held to repair the damages committed by his family, before the judgment, although he is gravely culpable. But the manner in which he turned Caprasius away will appear justly too boorish.

2. Sabellus is not held in any case, before the judgment, to repair the damages caused to Hilarius. More than that, for the damage committed in the last case, the judges can condemn neither Tityre nor Sabellus; because the shepherd was not free at all.

Case XIII.

Negative Co-Operation.

Janvier, a tailor workman, laboring in his master's shop with two comrades younger than himself, steals some golden and silver remnants, coming from the clothing of a nobleman, unconscious that his master sees him. The other two workmen seeing this, immediately follow his example. Although their thefts, considered separately, do not constitute a grave matter, on account of Janvier's theft, however, united together, they doubtless make a notable matter.

Ques. 1. Have the youngest workmen sinned against justice?

Ques. 2. What should we say about the older one, Janvier?

Ans. Question 1. The two youngest workmen have not sinned gravely, but only slightly against justice; because each one of them has committed only a slight theft. . . .

Ans. Question 2. And Janvier also has not sinned gravely against justice, at least has not caused an unjust injury, and consequently he is not held jointly and severally to make restitution; because, like the others, he has only committed a slight theft, and is not the efficacious moral cause of the theft of the others, but only the occasion, at least, according to the more probable opinion.

Case XIV.

The One Who Says Nothing.

Canut sees a thief taking away some wheat from Paul's field. He does not oppose it nor cry out, though it is easy for him to prevent the theft. More than that, far from stopping or denouncing the thief, he receives money from him, in order to keep silence in the matter. But when he goes to confession his confessor accuses him of a grave sin, and obliges him, at the same time, to give to the poor the money he has received, and to repair the wrong done to Paul.

Ques. 1. Has Canut sinned gravely in not preventing the theft?

Ques. 2. Is he obliged to make restitution to Paul?

Ques. 3. Shall he give the money he has received from the thief to the poor, give it back to the thief, or keep it for himself?

Ans. Question 1. 1. Canut assuredly has sinned gravely against charity in taking care not to cry out or stop the thief, although duty would not require him to defend Paul's field; because every one of us is held by the general precept of charity to prevent evil to another, whenever we can do it easily without a serious prejudice for us.

2. But Canut has not sinned against justice in accepting money for his silence, if the theft was already consummated; because, in promising to be silent, he has not been the efficacious cause of the theft; he has not defended the thief, but has only defended him against an accusation of theft, against the danger of incurring a penalty, and consequently he cannot have an influence upon the theft, as an efficacious cause. It would be otherwise if he had received some money before the execution of the theft, so as to protect the thief.

Ans. Question 2. Canut must make restitution to Paul, as having participated of an efficacious manner in the theft, if he has received money from the thief before the act, in order to protect him to such a degree that he may have a stronger passion for stealing. And in this case Canut must repair the wrong, instead of the thief. With still more reason one would accuse him of

having participated in the theft, if he had received some money in order to keep watch, or to protect the escape of the thief.

Ans. Question 3. If Canut has not contributed to the theft,—for instance, if he has received the money after the theft was accomplished, for his silence, and not to denounce the thief,—he can keep back the money; because a contract weighing upon an indifferent thing is valid. But if, in receiving some money before the theft, he has protected the thief, and has made him more ardent, according to a great many theologians, he ought to give back the money to the thief himself; because then the contract is void, as countenancing an unjust thing. But, according to very many others, Canut would participate in the theft, even in promising to keep silence; nevertheless he could keep the money after the theft, as a reward for the service given to the thief.

Cases on the Circumstances of Restitution.

Case I.

Joint Responsibility.

Meliton, seeing two men stealing a bale of goods, joins himself to them, helps them to carry the load, and receives his part of the plunder. Another time, knowing that three men go in order to set Damien's barn on fire, he also goes, and sets the fire with them.

Ques. Ought Meliton to make restitution of the whole if the others do not return their shares, in the matter of the bale and fire?

Ans. One ought to dispense Meliton from a joint and several liability restitution: 1, He is not to be held to it for the bale, because then his co-operation was not necessary for the cause of the prejudice, inasmuch as the other thieves were carrying away the bale without his aid. 2, Nor for the fire, at least according to the probable opinion; because, although his action might have been sufficient to occasion the damage, it was, however, only a partial influence, seeing that it cannot be called either necessary or common.

Case V.

Time of Restitution.

Mirocles, on account of being obliged to provide for his parents, has postponed for a notable time the payment of certain damages and debts which he has contracted. At the death of his parents, as he goes to pay his creditors, he learns that, in consequence of this delay, they have suffered a loss of gain, and that a great injury has resulted from it. . . .

Ques. Should Mirocles repair the injury caused to his creditors by this delay?

Ans. 1. No, he ought not to repair it, because this delay was neither voluntary nor culpable.

2. And he even ought not to repair the injury resulting from the delay in the payment which he was to make for damages, because this prejudice did not result, properly speaking, from an offence, and was not foreseen.

Case X.

Causes which Dispense with Restitution.

Mayloire, overwhelmed by debts, in consequence of hard times, has not more than six thousand francs, which he needs to support himself and family, especially an insane son.

Ques. Is Mayloire released from obligation to pay his debts?

Ans. Mayloire ought to be easily excused from making restitution. But in this case it is difficult in theory to give a sure and precise solution; that depends upon circumstances.

Case XIV.

Release of Property.

Olibrius, is overwhelmed by debts, and he is utterly unable to pay; therefore he is obliged to sell all his properties. But the unfortunate man, to support his wife and a numerous family, threatened with poverty, secretly puts aside a certain sum, and hides it carefully. At another time he omits to declare a very secret debt that Titius owes to him; and he advises his debtor to keep profound silence on this subject.

Ques. What must we think of Olibrius? Ought he to make restitution?

Ans. Olibrius must not be disturbed in those two cases, if the money which he has put aside is very necessary to avoid poverty.

Case XV.

Embarrassed Debtors.

Adrien, being unable to pay a debt, obtains from the Court a

division of the property between himself and his wife, in order that their common property may not be seized by the creditors.

Ques. What must we think of Adrien?

Ans. Adrien must not be molested, in principle; for his wife has the right to ask this division, provided she does it without knavery, or did not participate in anything to the injustice of her husband, for instance, relatively to debts contracted with injustice or prodigality.

Cases on Special Restitutions.

Case II.

Restitution for Homicide.

Jacob has killed Marc, who was ruining his family by his luxury and habits of drunkenness. His Confessor orders him to give a sum of money, as an indemnity, to Marc's family. Jacob answers, that the death of Marc, instead of being a misfortune, is a profit to his family. The Confessor insists; and as Jacob persistently refuses to obey, the Confessor sends him away without giving him absolution.

Ques. Ought Jacob in reality to indemnify the family of Marc whom he has killed? Should the Confessor order him to give this compensation?

Ans. No; for Jacob has not caused any damage to the family, and he has even prevented it from being more ruined. Then the confessor, by reason of justice, could not order him to indemnify the family, threatening him with a refusal of absolution. He could only impose on him a penance, either of giving some money to the family, if it was in need, or of giving it as alms to the poor.

Case III.

Restitution for Rape.

Sylvie, a girl of good morals, was seduced, or rather violently seized by Lupin, under unfortunate circumstances. Deploring the loss of her virginity, and almost in despair, she goes two or three months later to Lupin, and assuring him that she is pregnant by him, demands of him two thousand francs; as much for the loss of her virginity, as in order to avoid dishonor and bring her child up elsewhere; if not, she threatens to sue him at law,

and publish his fault everywhere. Lupin, in order to avoid dishonor and to bring up the child, reluctantly gives her the money asked for, although with regret. But going to confession, she asks if she can keep that money. The Confessor declares that she ought to return it to Lupin.

Ques. Can Sylvie keep the money obtained by a knavery, as a compensation for the loss of her virginity, or for some other claim?

Ans. 1. Sylvie cannot keep any money for the loss of her virginity,— a loss that one cannot estimate, and that no one can indemnify.

2. Neither under the pretext of bringing up her child; because, as soon as there is an error in the principal motive which impels us,— error which is the cause of the contract,— this contract becomes null. Now, the final cause, at least partially, does not subsist, inasmuch as there is no child to bring up. Then the contract, as far as something has been given to Sylvie to bring up her child, is null by natural right. Therefore, Sylvie cannot keep anything for that reason.

3. But she can keep part of the money for relinquishing her right to denounce Lupin, or to disclose his fault.

Case IV.

Restitution for Fornication.

Laban, by dint of prayers and caresses, has induced the young Romelie to sin with him. She resists at first; and at last consents. A child is the result of it, who dies at his birth. But the fault having been divulged, Romelie cannot find any honest man who will marry her. Consequently, indignant, she claims, with a great outcry, a compensation from Laban.

Ques. Does Laban owe anything to Romelie?

Ans. Laban owes nothing, in principle, unless he may have divulged the matter himself. For, from what has been said, from the moment when the woman consents to sin, the man owes nothing, except his part in the expense of bringing up the child. Now, in this case, there is no expense, the child having died

immediately. Then Romelie shall attribute to herself only the misfortune which results from her fault. She ought to have foreseen it before she committed that fault. How many tears flow too late from her eyes!

Case X.

Fraud to the Prejudice of the Treasury.

Severin, a priest, carefully questions his penitents, in order to know if they have not committed some fraud in order to avoid paying the duty in the purchase, sale, or transportation of goods; if they have evaded the custom officers; if they have refrained from reporting their goods themselves when not questioned. When the penitents confess to either of these frauds, Severin obliges them to make restitution to the custom officers, and exacts from them a serious promise, even under refusal of absolution, not to sin in the future on this matter.

Ques. What should we think of Severin's way of acting?

Ans. The indiscretion of Severin in all his conduct is clearer than noon day. He must refrain in the future from tormenting his penitents who say nothing on this subject. It will be safer for him to keep silence on this matter. If one of his penitents interrogates him, he can exhort him to pay the duties. But let him keep himself from solving difficulties that more learned men than him cannot determine about.

Case XI.

Fraud to the Prejudice of the Treasury.

Forbin sells to Gilbert a field for thirty thousand francs. But they do not want to pay the tax established by the government upon the sale of properties. What shall they do? The way is well known, and used. They agree to declare only twenty thousand francs on the deed, and they go to the notary's. At this declaration, the notary, smiling, because he knows the true value of the field, says to Gilbert: "It will be a good bargain for you, rascal!" and without saying anything more, he draws up the deed.

Ques. 1. Is it sinning gravely against justice to feign an inferior price in the purchase of a field, in order to pay less taxes?

Ques. 2. Should the notary make restitution in this case; for he knows the fraud, and yet draws up the deed?

Ques. 3. *Quid.*—If he had himself advised the contracting parties to do it?

Ans. Question 1. There is controversy. . . . The opinion which seems the more probable, exempts the contracting parties from the obligation to declare the true price; because the law does not appear to seek more than to be assured of the validity of a public contract, and the delivery, like as the payment, of the thing sold, and to give some securities in case of suit in law; for instance, if there was an eviction. This is why it does not appear that there is, in conscience, any obligation to declare either the price paid or the value of it, at least, the smallest that one can assign to the thing. But those who diminish this value beyond reason, expose themselves to the danger of paying a fine. As for inheritance, it shall be sufficient to declare the value based upon the annual income, as one does usually.

Ans. Question 2. No; because the notary is not obliged by his duty to enforce the payment of the tax, like government employees, but to draw up the valid deeds.

Now, the declaration of the price has not any relation with the validity of the deed. Moreover, he does not participate in the fraud, and does not sin against justice; because, according to the probable opinion, the contracting parties do not sin themselves.

Ans. Question 3. The difficulty is greater. Some assert that the notary, in this case, ought to repair the wrong done to the Treasury; because if he is not held to prevent the fraud, at least he is held not to participate in it in a positive manner. But others excuse him; because, if the contracting parties do not sin, the notary does not sin either, even in co-operating in a positive manner. For the notary has not charge of the taxes, and is not held by his duty to collect them. Then, in regard to this, he must be likened to a private person.

Treatise on Contracts.

The science which treats of contracts, especially at the present time, ought be regarded as necessary. For trade extends itself so far—arts, not liberal, improve themselves so much—that for the equity of contracts, one has recourse more and more often to the sacred tribunal. But it is there especially that appears the difficulty to conciliate the laws of conscience with the civil code. However, with the help of God, as we hope, we will proceed with so much prudence that, guided by the most renowned doctors, we will be accused neither of supreme severity nor of supreme indulgency.

PART FIRST.

Contracts in General.

754. One calls a contract a covenant, by which one or several persons agree with one or several others to give, to do, or not to do something.

One distinguishes contracts as:

1. Unilateral or reciprocal. . . .
2. Gratuitous or onerous. . . .
3. Solemn or simple. . . .
4. Named or unnamed. . . .
5. Bare or covered. . . .
6. Formal, express; or virtual, tacit. . . .
7. Absolute or conditional; pure or not pure. . . .

In all contracts, one distinguishes three things: the essence, the nature, and the accidents.

CHAPTER I.

Conditions Required for the Contract.

There are three of them: the qualified reason, the capable person, the legitimate consent.

ART. I. The reasons for the contract.

These are, in general, the properties and the points in question; that is to say, all that may become the property of the man, and all of which the contracting parties have the free administration.

The reason ought to be: possible . . . existing . . . honorable . . . belonging to the contracting party . . . certain . . . and able to be appraised. . . .

760.—Ques. Should the thing accepted in virtue of a shameful contract, be always given back?

Ans. 1. Before the accomplishment of the act. yes.

2. After, there is controversy. The more common opinion says: that the price can be accepted; more than that, the price is merited in conscience, . . . because the shameful act, although unworthy of price, as well as illicit, deserves as much for it as laborious, repugnant, perilous or useful acts.*

* Here takes place the elegant dissertation of Tambourin, in his explanation of the Decalogue: "How much can a woman," asks to himself the famous Jesuit, "exact justly for the use of her body?"

"The ordinary answer," says he "is that it is necessary to keep count of all the circumstances, viz: Nobleness, beauty, age, *honesty*, etc. For an honest woman, to whom everybody is not admitted, is worth more than one who abandons herself to every one. But that is not satisfactory.

"Some distinguish between a courtesan and an honest woman. The courtesan can, in fact, neither claim nor accept only what she is accustomed to ask of other persons; because there is a contract of purchase and sale between her and the man: he gives the price, and she, the use of her own body. . . .

"As for the honest woman, she can ask and accept as much as she is willing to . . . because an honest girl can estimate dearly her honesty . . . This is why the courtesan can sell herself dearer at her first steps. . . . (Page 290.)

It is also convenient not to forget Doctor *J. Gordon*, who, after having shortly recalled Tambourin's principles, raises up a particular species, full of interest: "When the courtesan is married, to whom belongs the product of her debauchery, prostitution," as he says in precise terms. "She ought," answers he, "to count the sums received, into the community, upon which her husband shall have his right." (Page 289.)

The second opinion denies it, and declares the contract invalid.

ART. II. Subject of the contract.

SECTION 1. Minors. . . .

SECTION 2. Wives. . . .

SECTION 3. People dead in law. . . .

SECTION 4. Interdicted persons and spendthrifts. . . .

ART. III. Required consent.

SECTION 1. Qualities of the legitimate consent.

772.— This consent shall be: external, internal, reciprocal, free and deliberate. . . .

774.—Ques. Is a contract valid if it is made with the intention of contracting, but not of binding one's self to fulfil it?

Ans. According to the more probable opinion, no; because one has added a contrary condition to the substance of the contract. From some others, it is according as the will of the contract prevails or not.

SECTION 2. Faults opposed to the consent.

The principal are: Error, ruse, violence and fear.

777.—Ques. Can error or ruse on the subject of the quality, which is the cause of the contract, annul an onerous contract?

Ans. No, according to the more probable opinion. . . .

But when the error comes from a ruse of which one of the contracting parties is the author or co-operator, some have judged that natural right, others that positive right, annuled the contract; but the common and more probable opiuion establishes that it is valid according to the one or other right, although it might be torn up by the one who has been deceived; for the substantial and voluntary consent has not failed. On the other hand, the deceiver is held to repair the wrong which he has done, which cannot be done unless in re-establishing the thing wholly, or unless the contract be broken. If the ruse has been used by a third party, without the fault of the second one, necessarily the contract is valid; but some pretend that one can tear it off, the others no, yet, that the deceived party has a recourse against the deceiver in order to obtain reparation. . . .

778.—Ques. Can error or ruse on the subject of the motive annul a contract?

Ans. 1. Yes, if the errors fall upon final motive; for instance, if one bestows charity on Titius, believing he is poor, when he is rich.

2. No, if the error falls only on the engaging motive; for instance, if one bestows charity on Peter who is poor, whom one believes very honest, when he is only a little so, for that error is purely accidental.

779.—If wishing to buy some Bordeaux wine, you receive some Burgundy, the contract is valid in principle, in spite of the error or ruse; because the error is not a substantial one.

780.—1. A contract, in consequence of an intrinsic fear or of a natural or necessary cause, is not deprived of value and cannot be torn up, unless the one who has contracted through fear may not have been the master of himself. No injustice has been done to the contracting party who keeps a sufficient liberty.

2. It is the same if the fear comes from a free cause, or has been inspired by a man for a legitimate motive. . . .

782.—Ques. Can one rescind a contract made under the influence of a reverential fear?

Ans. No, according to the more probable opinion; because that does not appear a sufficient cause for tearing up a contract, unless one may understand by it the fear of a serious evil, for instance, a long indignation. Likewise prayers, the most importune, do not constitute a grave fear, unless there may be joined to the prayers a reverential fear towards a superior.

Ques. Is a contract void, or can it be torn up by private authority, if a grave and unjust fear has been inspired only by a third party, without the second one participating in the injustice?

Ans. There is controversy. The first probable opinion affirms it. . . .

The second one, also probable, denies it. . . .

783.—Ques. And if a grave fear has been inspired unjustly, but not in order to extort the contract?

Ans. There is controversy. . . .

784.—If you threaten a thief, surprised while stealing, to

denounce him to the wronged proprietor, or to the police or judge, unless he promises you a certain gift, his promise has some value, and you are not held to give back the gift received, unless that gift appears extreme in the judgment of a prudent man. This is true, even if you did not have the intention to denounce him, but only to frighten him; because you yield a part of your rights, the value of which can be estimated. . . .

If some one meditates wronging you, out of pure malice, and asks nothing from you, and if you yourself promise money to him in order to have nothing to fear from him, you are not held to keep your promise; because, although fear constrained you to that contract, its only object was, however, to prevent the wrong that would have been done to you. Now, the one who seeks to wrong you cannot sell his withdrawal; consequently, all that he is acquiring in that manner he receives as a possessor in bad faith, and ought to restore it.

CHAPTER II.

Obligation of the Contract.

This is the tie by which one is constrained, by the strength of the contract, to give, to do, or not to do something.

786.—Ques. Are contracts valid and obligatory, in conscience, in which the formalities required by law are missing?

Ans. There are three probable opinions:

The first one affirms it; because, by natural right, nothing less than the consent of the parties is sufficient to oblige, and the human law does not suppress the natural obligation between persons elsewhere capable, though it renders the civil action void.

The second one denies it; because the laws annuling contracts rest upon the presumption not only of ruse, but also of common danger, inasmuch as the common interest requires that one suppress the occasion of no matter what fraud; and, consequently, the law can and ought to suppress, in the spiritual tribunal, the obligation of an annuled contract.

The third opinion requires, that in those contracts one should

favor the possessor, until he is condemned to make restitution by a judgment. . . .

788.—Ques. Can one, in ceding his property, secretly reserve something for himself?

Ans. If one finds himself in great need, he does not sin against justice in reserving for himself enough to provide for his family until the judge may provide for it. Even after the judgment, one must not trouble those who have reserved for themselves things really necessary, and of little value. . . .

CHAPTER III.

Modification of the Contracts.

ART. I. The oath joined to the contract.

793.—Ques. Are oaths valid which are extorted by fear, in order to consolidate some contracts not valid, in principle, on account of fear?

Ans. The first opinion, more common, affirms it; because, for a religious motive, one should be faithful to one's oath, whenever one can do it without sin.

The second opinion denies it. . . .

ART. II. Some specified modes of contract.

. . . . . .

ART. III. Conditions of the contract.

. . . . . .

PART SECOND.

Different Kinds of Contracts.

There is the gratuitous contract and the onerous one.

Section 1. Viz.: Promise, donation, loan, deposit and sequestration, commission, administration of property, exchange.

CHAPTER I.

Promise.

797.—This is a contract by which one engages freely and spontaneously, to do or not to do, gratuitously, something in favor of another. . . .

CHAPTER II.

Gifts.

ART. I. Gifts in general.

801.—A gift is the free transfer of a thing, in favor of another. . . .

ART. II. Different kinds of gifts.

812.—Ques. Is a gift valid if the giver dies before its acceptance?

Ans. The negative is more probable; the affirmative is not improbable.

Ques. Can the heir of the receiver accept the gift at the death of the above-mentioned?

Ans. The negative is more probable.

Ques. Is a gift binding, which is solemnly promised, but not accepted?

Ans. No, says St. Liguori; Yes, says Laymann.

Section 2. Wills.

817.— . . . Ques. Are wills valid, in the spiritual tribunal, which have profane causes for the motive, and lack some of the required formalities?

There are three probable opinions: the first one declares them valid; the second one, null; the third one, preferred by St. Liguori, is in favor of the possessor until the judge may have decided.

818 —Are wills valid which have pious causes for the motive, even if the legal formalities are missing?

Ans. Yes; and this opinion is very common and certain. . . .

827.—Ques. Is there sin against justice, in the spiritual tribunal, when parents wrong their legitimate children by a will, or by gifts during the lifetime of the parents, or by feigned contracts?

Ans. Yes, in principle.

But, there is no sin when, for a legitimate reason, they partially wrong their children, in some particular cases. For then the law has no more bearing, not seeking to extend itself to those particular cases which are useful to the family, and that do not injure the common interest; for instance, if a father made a gift as a reward to an honest child, to the detriment of a spendthrift one.

According to this, those children who have received the larger part of the inheritance, to the detriment of the other heirs, must not be disquieted, when one can conjecture, from the circumstances, that the parents wished to favor them for a just reason; especially if they are of good faith, and if one can fear with reason why they refuse to fulfil their obligations. Many theologians even think that the civil law cannot oblige parents to keep equality between children. Therefore parents are exempt, in principle, from all fault, if they have provided besides for the wants of their children, and if they are not impelled by a guilty motive.

828.—Ques. Can parents make gifts from hand to hand to one of their children, to strangers, or to some pious causes?

Ans. Yes, all kinds of gifts in principle, with the income only, leaving intact the capital, which constitutes the patrimony, properly so called; because parents are by no means obliged, in principle, to increase the patrimony, by their income or their work. . . .

830.—Ques. Ought a legacy, given by natural right to a young girl in order that she may marry, to be given to her if she enters a convent?

Ans. Yes, if the legacy has been left to a determinated person. . . .

SECTION 3. The gift by reason of death.

835. According to French law, the gift by reason of death is not allowed. For Article 893 declares, that: nobody can freely dispose of his properties, only by gifts during the lifetime of the donor, or by will in the legal form. . . .

836.—Ques. Can one to whom has been given a piece of personal property, in consequence of death, take it after the death of the giver?

Ans. Yes, at least according to the more probable opinion, provided that he is sure of the gift, and the last will of the deceased. For he has the right to it, and he is only using his right. Then, the thing was not given in order to be paid for, but in order to be received by him.

Ques. Is a gift from hand to hand valid, if made by a sick person, on condition that the gift will be restored to him if he recovers?

Ans. Yes; 1, Because the gift is valid as made in case of death, even according to French law, which does not oppose itself to the gift from hand to hand; 2, It is valid as a gift during the lifetime of the donor, if it is not revocable by the will of the giver, but only if he recovers; because then, it may be looked upon as a conditional gift during the lifetime of the donor.

Ques. Is the gift valid if made on condition that it shall be restored if one asks for it?

Ans. Yes, according to the more probable opinion, although it may not be valid as a gift during the lifetime of the donor; because then the donor ought to deprive himself irrevocably of his property; however, it can be valid as a gift in case of death, on account of the actual delivery of the thing, which ought not to have less force, although one may make no mention of the death.

SECTION 4. Entailment and trust.

. . . . . .

840.—Ques. Are secret trusts valid, in the spiritual tribunal, for some pious causes, under form of a feigned gift, a will, or a legacy, in favor of a private person?

Ans. 1. Yes, if it is a question of a gift from hand to hand, or of things which cannot be preserved for a long time before the transfer, or which ought not to be preserved until the death of the donor, and ought to be regarded for that as things bequeathed

for a time or on a condition, because that it is not forbidden by the law.

2. As for what concerns the other gifts, it must be answered the same as for the wills in favor of the pious causes, where the legal formalities are missing.

CHAPTER III.

Loan to Custom.

. . . . . .

CHAPTER IV.

Deposit, and Deposit by Sequestration.

. . . . . .

CHAPTER V.

Commission and Administration of Property.

. . . . . .

CHAPTER VI.

Loan.

ART. I. Nature of the contract of the loan.

. . . . . .

ART. II. Interest or gain received from the loan.

Interest (*usura*) understood in a broad sense, is the gain received from the loan or on its occasion, with or without legitimate title. In its strict meaning, and understood in bad part, it is an unjust profit proceeding immediately from the loan; that is to say, from its intrinsic strength, and without other joint title. . . .

853.—All interest, properly speaking, in putting aside all external title, is prohibited by natural, divine, and ecclesiastical law. "Such was, and is, the perpetual doctrine of the Catholic Church, confirmed by the unanimous approval of all councils, fathers, and theologians." (Benoit XIV.)

Interest may be excused from all injustice, if there is a just title; for instance, in consequence of a wrong; because, then the gain does not come from the loan, but from the external title, for it is permitted for you to receive as much as you have given. Now, then, if lending one hundred francs you are losing ten francs by it, you lend really one hundred and ten francs. Then you shall receive one hundred and ten francs. . . .

854.—Ques. Can the lender retain what the borrower has given to him out of dread, fearing to meet with a refusal somewhere else?

Ans. Yes, according to the more probable opinion; because one requires for the interest, that this interest shall come from the strength of the contract itself, as being due from justice. . . .

Ques. Can one insert in the agreement a gift, in return (*antidorale*), that one makes out of gratitude?

Ans. No; because same agreements are a title of justice, and not a gift given purely out of gratitude.

ART. III. Titles which excuse the interest.

There are five principal ones: 1, loss experienced; 2, deprivation of a gain; 3, risks of loss; 4, conventional penalty; 5, the civil law.

I. Loss Experienced.

856.—This is the detriment that the lender undergoes from the occasion of a loan made to another.

If the lender sustains a prejudice on account of his loan, there is a legitimate title for receiving more money.

857.—Ques. Is it permitted, from the very first of the loan, to agree to a certain benefit, if the resulting loss is only probable in the future?

Ans. Yes. . . .

II. Deprivation of a Gain.

858.— This is the loss of what the lender might have gained if he had kept his property or money, and had used it in another legal contract. . . .

Ques. Can one exact something for the deprivation of a gain, on account of a loan, if the lender might not have used his own money for anything?

Ans. 1. Yes, if one had reserved it for the wants of his family, or in order not to compromise his own position; because one is not obliged to neglect his own affairs on account of making a loan.

2. Yes, according to the probable opinion, in all other causes; because the loan is the true cause of the deprivation of the gain.

III. Risk of Loss.

859.— This is the reasonable fear that one feels in apprehending that he may not be able to retrieve what he has lent.

This risk constitutes a just title for gain. For, if one can estimate the value of the expectation, *a fortiori*, one can estimate the risk of a probable damage.

IV. Conventional Penalty.

861.— This consists in what the borrower binds himself to pay in addition, if he does not return the loan at the fixed time.

It is a legitimate title to accept something more than the borrowed money, by which one secures himself against the negligence of the borrower.

V. Title Coming from the Civil Law.

862.— Laws authorizing a certain profit on loans, exist among almost all people to-day. In France, the law enacted on the 3d of September, 1807, fixed at 5 per cent. the interest on civil matters, 6 per cent. in the commercial ones.

As for knowing whether the civil law creates a legitimate title in the spiritual tribunal, in order to get some gain from a loan, there is controversy. The opinion which answers yes, is the more probable and common. It follows, then, that:

The title of the civil law, according to the more probable opinion, is a just and honest reason for exacting something in addition, even in the absence of any other title. . . .

872.—Ques. Is one permitted to exceed the legal rate, on account of loss experienced, or the deprivation of a gain?

Ans. If the money is given for the *profit*, and not for the *necessity* of the borrower, there is controversy, and two opinions. The first one affirms it by reason of indemnity, or just compensation; so thinks Pagès de Lyon, in spite of his severity, so known in matters of usury. . . .

873.—Ques. Is it permitted to receive interest on interests?

Ans. Yes, in the civil law. . . .

1. Yes, also, in the spiritual tribunal, if there has been anterior, explicit, or implicit agreement.

2. If, in consequence of a delay in the payment, the creditor experiences a loss.

Ques. Is it permitted to collect the legal interest when it exceeds 5 or 6 per cent.?

Ans. Yes, if the law seems just when one has considered all the circumstances; that is to say, if one sees there is equality between the interest permitted by the law, and the value of the use of the money. . . .

875.—One can, and even ought, to absolve those who do not exceed the legal rate of interest, seeing that they commit no injustice, and one cannot constrain them to make restitution. . . .

876.—One must not accuse of injustice those who draw the interest of the money lent to a poor man who does not find himself in a grave necessity. . . .

877.—The one who borrows at the legal rate, should not exact 10 per cent. in lending in his turn to another person; because he has no title to exact 5 per cent. more. However, many permit bankers, who borrow often to lend in their turn, to exact something more than the legal rate; for instance, one per cent. on account of their work, time, and expenses; according to the bankers, they could ask 7 per cent., for they are considered as merchants, and as such could already ask 6 per cent. The custom of many countries authorizes them. Likewise, it is not

contrary to natural or civil law to borrow at 3 or 4 per cent., and to lend at 5. . . .

Appendix: On Loan-Banks.

879.— . . . This institution is permitted, and is not a usurer, independently of any other title to gain. . . .

880.— Ques. Can a private person establish a loan-bank?

Ans. Yes, according to the more probable opinion, because it matters little for the interest whether it may be a public or private institution, provided the principal person exact only what is necessary in order to indemnify himself.

Section 2. Onerous contracts.

Of sale and purchase, society and *trinaire* contracts. letting and hiring, exchange, quit-rent, security, pledge and mortgage, assurance, promise, lottery, game.

CHAPTER I.

Sale and Purchase.

ART. I. Nature of the sale and purchase.

881.—The contract of sale and purchase is thus defined: the exchange of money for merchandise, or *vice versa*; or: an onerous contract by which one engages one's self to give a just and determined price for merchandise, and *vice versa*.

882.— Ques. Is the seller obliged to declare the defects in his thing?

Ans. It is necessary to distinguish: according as those defects are substantial or accidental, manifest or hidden, and if the seller is questioned or not on the subject.

If the defects are substantial, he is held to reveal them. . . .

Interrogated, he shall reveal all the hidden defects. . . . Not interrogated, no. . . . He is not held to reveal the accidental defects. . . .

ART. II. Fair price.

889. There is the price *legal*, or determined by the law, and the natural and popular price, fixed by the common opinion of men.

890.—The legal price, or the one fixed by civil authority, ought to be considered as adequate to the value of the thing, and kept on condition of restitution.

Sometimes it is permitted to deviate from it:

1. If the majority itself deviates.
2. If, the circumstances changing, the price becomes unjust.
3. If the goods are notably dear, more or less, than the custom.

In the absence of a legal price, one should consider as only just, the price determined by common opinion, if one is capable of estimating it; because this price, adequate for the things of same species, is deduced by their utility for common uses, and could not be better estimated than by the common opinion. . . .

891.—Ques. Can a seller sell an object dearer, on account of a particular attachment he has for it, or of the advantage that he receives from it?

Ans. 1. Yes; because that attachment can be appraised, inasmuch as the privation of it is more laborious.

2. Yes, with more reason, if the privation of a special advantage makes the thing much more precious to the seller; it is just that he increase the price of it, by reason of the loss which he undergoes.

893. Ques. Can one buy at a low price in order to please a seller who seeks a buyer?

Ans. Yes, for the things are undervalued by a voluntary offer; and the price diminished, when the thing is of little use to the buyer, and the latter buys it only out of kindness towards the seller.

Ques. Can one buy at a low price when the sale takes place on account of poverty?

Ans. Yes, according to the probable opinion; because the article loses its value in the common estimation. The poverty of the seller does not change the common estimation. However, others deny it, with probable opinion.

894.—Ques. Can one buy a promissory note, or a claim upon a person, at a low price, on account of an anticipated payment?

Ans. 1. Yes assuredly, if the payment is uncertain or difficult; because the claim loses a great deal of its value.

2. Yes, according to the probable opinion; even if the payment of this promissory note or claim is certain and easy; because: 1, one buys not the money itself, but the action upon him, and, consequently, the price given for such promissory notes is supposed fair; 2, because there is equivalence in the money lent; but also, for the same reason, it is permitted, with the loan, to realize a moderate gain, at the legal rate.

895.—Ques. Can one buy at a greatly inferior price some debts very difficult to collect, on account of special circumstances which renders the collection easy to you?

Ans. Yes, according to the more probable opinion; because easiness to obtain the payment does not depend on the thing sold, but on the buyer himself. Now, the value of a thing is not determined by a particular circumstance to the buyer, but by the common estimation.

896.—Ques. Can one sell at the current price a merchandise mingled with another of inferior quality?

Ans. . . . 1. If your merchandise is of an extraordinary quality, you can probably, after having mixed it, sell it at the common price; 2, If you mix inferior merchandise with superior, in such a manner that the value of the superior one is diminished, you can sell it at the customary price. . . .

897.—Ques. Are dealers held to make restitution when, by their lies, they induce the buyers to pay for their goods dearer than they ought to do, however, without exceeding the highest price?

Ans. In principle, it may be necessary to declare it; because there has been a cause of damage. However, ordinarily, the lies, or even perjuries, by which dealers affirm that their goods cost so much to them, or that such a price was offered to them, ought not to be considered as frauds really prejudicial; because these frauds are so frequent with them, that almost nobody trusts in them. . . .

900.—Ques. Does one sin against justice in buying, at a low price, some precious objects exposed for sale by dealers of antiquity?

Ans. No; because those things are supposed to have lost their former price, for another price admitted by custom and the agreement of the contracting parties. Consequently, there exists the greatest latitude in the price of these objects. It is for that reason that one buys for a few francs some books which might have been sold for five or ten francs. Likewise, in the purchase of second hand pieces of ancient furniture, which are commonly regarded as having an inferior value.

ART. III. Principal kind of sales.

SECTION 1. *Retrovendition* and *mohatra.*

903.—*Retrovendition* is a contract by which the seller reserves the right to buy his property back, under condition that he will take account of the improvements, outlays, etc.

Mohatra is a sort of re-sale, or contract, by which one sells a thing at a higher price, under condition that the buyer sells it again at an inferior price after having paid for it. . . .

906.—Ques. What must we think of the *mohatra* contract.

Ans. It is a usurious and illicit contract, in principle, which was condemned by Innocent XI. Prop. 40th.

However, we must not condemn this contract, if the gain does not exceed the legal rate of interest for the lent money.

There is a recent commercial transaction, included in the re-sale, called *Report.* . . . This kind of re-sale should not be condemned, in principle, provided the overplus does not exceed the legal rate; for one would fall easily into usury and *mohatra*, if one did not keep himself within those just limits.

There are some, however, who enlarge those limits, and that from an opinion not improbable.

SECTION 2. Auction sale. . . .

910.—Ques. Can a purchaser make an agreement with others not to outbid him, or offer more than he?

Ans. No, at least in the case of a forced auction sale, because

the seller has the right to require that the purchasers be perfectly free, in order to increase the bids. However, Cardinal Lugo, with Diana and others, seem to have the contrary opinion, at least, as to the sin of injustice.

911.—Ques. Can a purchaser request others not to bid in the auction?

Ans. Yes, because in so doing, the right of the seller is not violated, inasmuch as the liberty of outbidding is not suppressed, and the purchaser only watches his own interests. However, the requests should not be importunate.*

SECTION 3. Monopoly.

914.—Ques. Do merchants sin against justice or charity when, at the time of the harvest or vintage, they buy at low and current prices all the wheat or wine of the country, in order to sell them dearer?

Ans. 1. No, according to the more probable opinion, as to the justice, provided they do not exceed the maximum price that one can obtain outside of the monopoly; for they do not violate any law.

2. No, according to the probable opinion, as to charity, provided they do not induce others to sell dearer, nor exceed the maximum price; for merchants use their rights, and no one is held to neglect his own interests in order to avoid a loss to others, inasmuch as one is not constrained to it.

SECTION 4. Sale by middle-men. . . .

CHAPTER II.

PARTNERSHIP AND TREBLE CONTRACTS.

ART. I. Partnership.

917.—A partnership-contract is an agreement concerning a thing to be possessed in common for the common interest, or for a proportional gain.

* See the *Penal Code*, Art. 412, which punishes such actions with imprisonment, from fifteen days to three months, and a fine of from one hundred to five thousand francs.

ART. II. Treble contract. . . .

CHAPTER III.

Renting.

. . . . . .

CHAPTER IV.

929.— Ques. Ought the exchange, commonly called of *Frankfort*, to be allowed, in which the money-changer lends money that one ought to pay back at the next stock-market, so that the profit increases in proportion to the delay?

Ans. Yes, if it is in virtue of a discontinuance of gain, consequent loss, etc., etc. Otherwise, there is controversy.

CHAPTER V.

Quit-rent.

. . . . . .

CHAPTER VI.

Subsidiary Contracts.

ART. I. The Bondsman. . . .

ART. II. The Security. . . .

ART. III. The Mortgage. . . .

CHAPTER VIII.

Contingent Contracts.

940.— These are of different kinds: insurance, betting, the lottery, and gambling. They are called contingent, because they are exposed to the vicissitudes of fate.

ART. I. Insurance. . . .

ART. II. Betting. . . .

ART. III. The Lottery. . . .

ART. IV. Gambling. . . .

There are three kinds of gambling: Ingenious, where the success depends upon the skill of the gambler; Contingent, which depends especially on chance; *Mixed*, where cleverness and hazard mix themselves.

945.— Any one of them is illicit in itself, under certain conditions. . . .

948.— Ques. Is the winner in a prohibited game obliged to make restitution to his victim?

Ans. No, because this contract is not declared void, but illicit only. . . .

Cases on Contracts in General.

Case I.

Motive of the Contractor.

Marius says to Antoine: "I will deliver you of your enemy Titius, if you will promise me one hundred louis, fifty immediately, the remainder after the death of Titius." Antoine consents to it. Marius receives fifty louis, and kills Titius.

Ques. Can Marius, the homicide committed, keep the money which he has received, and claim the rest which is promised to him?

Ans. There is controversy; according to the probable opinion, Marius can keep what was promised to him by contract. This is the opinion of St. Liguori, contrary to those of many others; because, although the contract may not be valid on account of its shameful and bad object intrinsically, nevertheless, after the crime is committed, it seems to have been a contract whose nature exacts that, whenever one of the two contracting parties has kept his word, the other ought to keep his, if he can do it justly. For, although this shameful action may be unworthy of any reward, yet it deserves some recompense, as difficult, perilous or shameful for the author. Then, after the crime, there is no sin if the party who has promised the money gives it. Then, Marius, according to the probable opinion, can keep what he has received, and claim what Titius has promised him.

Case II.

Motive of the Contract.

Armeline, a young girl, having received some money from Lœlius, who urges her to sin with him, after having refused to commit the shameful act, keeps the money.

Ques. Can Armeline keep the money received from Lœlius?

Ans. Yes, without any injustice; for there was no agreement to commit the sin, inasmuch as the money was used only to solicit the young girl.

Case III.

Contracts for a Shameful Object.

1. Valfrid has induced Elodie to sin with him, on condition that, if she yields to his wishes, he will marry her. But, after the crime, he refuses to keep his promise; because, says he, no child will come, and, consequently, he has no damage to repair.

2. Leonce induced Camille to sin with him, by promising money to her; but after the sin, the rogue gives nothing to the unhappy woman. Having declered this to his confessor, he is constrained by the latter to give money for a grave motive.

Ques. 1. Is Valfrid held to marry Elodie?

Ques. 2. Has Leonce sinned gravely in not giving the promised money? If he had given it, could Camille keep the money?

Ans. Question 1. Valfrid, according to the more common opinion, ought to marry Elodie; because there has been a contract having no special denomination *du ut des*. . . . However, others more recent oppose the plea of nullity drawn from the shameful contract.

But St. Liguori, and the majority of doctors, make some exceptions: 1, if one fears that the marriage may have a disagreeable result; . . . 2, if, when Valfrid made the acquaintance of Elodie, he believed that she was a virgin and discovered that she was not; 3, if, from the marriage, shame should reflect upon the family; 4, more probably, if the condition of the man is very superior to that of the woman.

Ans. Question 2. Leonce, according to the probable opinion, is not held to pay the promised money, if there is no wrong to repair, as most frequently happens; because a contract having for its subject a shameful object has no value, and there is evidently no obligation coming from another motive. But if the woman had received the money, according to the probable opinion, she would not be obliged to give it back, from what was said above.

Case XI.

Condition in the Contract.

Frederic, a rich man, without children, on the point of death, makes the following will: 1, he gives to Rose, a poor young girl, one thousand louis if she marries; 2, to Rosalie, his God-daughter, one hundred louis if she enters a convent. But after his death, Rose wishes to enter a convent, and Rosalie to marry.

Ques. 1. Can Rose keep the legacy, although she may not have fulfilled the condition?

Ques. 2. Has Rosalie a right to the legacy which has been left to her?

Ans. Question 1. Rose has a right to the legacy, because the testator wished evidently to favor her in forcing her to embrace an honorable condition, where the body and soul would encounter no peril. Moreover, the religious state is a true spiritual marriage; and if it was excluded by the testator, it would be a shameful condition, which would not be considered as having been added. Thus the testator is presumed to have wished to protect Rose, who could thus make an honorable marriage, or choose another honorable condition. However, it is necessary to examine the circumstances; for if the testator had said: "I leave one thousand louis to Rose if she marries my cousin Peter," the disposition falls if the marriage does not take place; for the testator wished to favor not only Rose, but also his cousin Peter.

Ans. Question 2. The legacy is owed also to Rosalie; because, from the circumstances, one can presume that the testator had wished to favor her in a a special manner, inasmuch as she is his God-daughter; and he is not considered as having wished to deprive her of this legacy if she felt no vocation for the religious state.

Case XIV.

The Disemboweled Dog.

Fulgence lends one thousand francs to Drusille. At the fixed time the latter goes to Fulgence, in order to pay his debt. He finds him taking his breakfast with his family. Received with affability and invited, he takes a seat at the table. He leaves on the

table a one-thousand-franc bill, without thinking of what will happen. While the guests give themselves up to mirth, a gust of wind, coming unexpectedly, raises the bill and dashes it into a dish full of sauce. Fulgence pulls it out immediately, and holding it by one corner, drains it at the end of the table. But, alas! there is a dog who, seeing the bill covered with sauce, seizes and swallows it. Immediately it is decided to kill the dog; but the animal runs away, and comes back only in the evening. He is soon disemboweled, but too late, the bill was entirely digested. From this proceeds a suit in law between Fulgence and Drusille.

Ques. Which one of these two should suffer the loss?

Ans. Here is a dog uselessly killed; his death cannot present a very grave suit in law. It is necessary to solve the question; but in favor of whom, creditor or debtor? Will the two parties be compelled to divide the loss? I think that Drusille, the debtor, should be exempted from the obligation to pay the sum. You will yield the right to me, if ever so little you examine the matter; for Drusille has shown the bill before all the guests, and placed it on the table before Fulgence, who saw it. Who of the guests doubted that the payment was made? Nobody, assuredly. Then, the creditor is considered as having received what was owed to him. Then, if the bill comes to be lost, it is lost for its owner, Fulgence. Besides, was the bill not lost in his own hands, rather by his dog, when he held it? Therefore, Fulgence alone ought to undergo the loss of the money and dog.

Cases on Promises and Donations.

Case I.

Promise.

1. Marcel has promised to give three hundred louis dowry to Appolonie, if she consents to marry Albert. For a while, the young girl does not know what to do; but her father gladly accepts in her behalf. However, Marcel, changing his mind, promises to give that money partly to a hospital, partly to the poor, and partly to a cousin of his, five years of age. But he changes his mind once more, and finally keeps the money for himself.

2. Victorin, a priest, promises to his friends, besides a special mention in his daily prayers, that he will celebrate a mass for them; but he often neglects to keep his promise.

Ques. To what extent has Marcel or Victorin sinned?

Ans. Marcel has not sinned by refusing the money promised to Appolonie; because, as it was a question of an onerous contract, the young girl's father could not very well accept in her behalf. And he has not sinned by changing his mind a second time; because no acceptation resulted from these various promises.

Victorin has, in fact, committed but a venial sin, had he strictly promised; but in most instances such promises are simply an intention suggested, and are not strict promises. However, you will notice that the most part of the time, the acceptation, which should be given, is missing.

Case III.

Donation Between Living Parties.

Benno, on his death-bed, resolves to give one thousand francs to Margaret, his wife, as a reward for her kindness, care and services to him, and also that she should not be disrespectfully

treated, and even scorned, by his only son. He therefore requests her to take the money, which is placed in a safe. She accepts; but thinking more of relieving her husband than of looking after her own interests, she only takes that money after the donator's death.

Ques. Is the donation valid? Is a wife allowed to take the money after her husband's death? Would the son be entitled to contest the donation?

Ans. The donation made to Margaret by her dying husband is quite valid, for there are all the required conditions: it was freely made, clearly determinated, accepted and made between living parties, by a man fit to make a gift: so it is to be supposed that the son's legitimate rights can not be wronged. The transfer of the money has therefore been made in favor of the wife when her husband was still living. Consequently, the wife is at liberty to take the money as she thinks fit, either before or after her husband's death. The question of circumstances makes no difference in such a case. The son, therefore, cannot contest the donation, inasmuch as it is entirely valid, having been made between living parties.

Case IV.

Conditional Donation.

Quidonius, a merchant, had promised three thousand francs to his niece, Bibiane, who was upon being married; but a few years later, having sustained misfortunes, and besides, Bibiane's husband not giving him satisfaction, he thinks he is released from his promise.

Ques. Is Quidonius discharged from his promise?

Ans. If it is question of a simple promise, Quidonius, for the two alleged reasons, is exempted from any obligation; for had he foreseen what happened, he would not have promised anything. But if it is a question of a donation between living parties, it is much harder to withdraw it; for the decrease of his fortune is not a sufficient cause to cancel the donation, and the other reason is of no value, if it were merely based on the bad conduct of the niece's

husband; unless Quidonius had been most outrageously ill-treated by his son-in-law.

Case VI.

Donation for Cause of Death.

Privatus, very sick, calls his servant, and says to her: "If I happen to die, you will take from my safe a box containing one hundred francs, that I wish to give you after my death." Beline, exalted with joy and sorrow, gives many thanks to her master. But the heirs were present, anxiously waiting. As soon as Privatus had passed away, all his property is put under seal, and consequently the unfortunate servant cannot take hold of the said box. She makes a claim, but without result, and is rebuked by the heirs. What is she to do? She catches a good opportunity to secure a secret compensation.

Ques. Has she misused secret compensation?

Ans. Beline had a right to take such a compensation; because she was entitled to receive the present, and it happened but accidentally that the heirs had refused it to her, as they were not certain about the fact. A secret compensation is allowed by theologians when the debt is positive, and the creditor cannot obtain payment by any other means.

Case VII.

Donation for Cause of Death.

Galdinus, being without children and severely sick, gives to Monique, his wife, one hundred francs, and his word that she should receive three hundred francs after his death. When he is deceased, his wife hastens to comply with his last wishes. But soon after, Pontius, the heir to all the estate, sues her in court, requesting her to swear that she has not taken anything from the dead man's property.

Ques. Shall Monique swear she has not taken anything?

Ans. Yes; because she has only taken what belonged to her; for at the death of the husband, the property of the given money is granted to the wife; the money, therefore, belonged

to her. Consequently, she has not taken what did not belong to her. Nobody has a right to ask her questions on the manner she disposed of her property. She is therefore right in swearing that she has not received anything of the estate of the deceased; that is to say, nothing which was belonging to him. Do not say the donation for cause of death is declared null by the French law; for it is only rendered void by a judgment, but not, probably, *ipso facto*, as will be further stated regarding wills having a lack of legal formalities. Moreover, as it has been above mentioned, the donations made from hand to hand are not considered as void.

Case VIII.

Donation for Cause of Death.

Philemon, being dangerously sick, says to Anna, his wife: "I give you one thousand francs, which you will find in our safe, in order to reward your good care and solicitude towards me." Anna accepts with thankfulness. But the sons that Philemon has had from a former marriage, endeavor to persuade their father to give up his decision, but without success. Consequently, after his death, they contest the donation as being prejudicial to their interests.

Ques. Shall Anna receive and keep the given money, at least before the judge's verdict?

Ans. Anna could, without any remorse of conscience, keep the money, at least before the judgment: unless she may have encroached on her legitimate rights. In the latter case, she should keep only a fixed sum in proportion to the surplus. For a legitimate donation transmits the disposable property from one party to another. Now, this donation was legitimate.

Case IX.

Donation Made by a Dying Man, and Denied by His Heir.

Gennadius had lent to his brother Henry, a dealer, one thousand louis, without interest, for two years, in order to help him out of a

great misfortune. One year later, Gennadius is taken very sick, and is in great danger of death. Henry, giving him a call, urgently asks his brother to give him discharge of his debt. "I gladly give you that money," answers Gennadius, "as my only son has enough for himself. However, I desire you to say nothing to anybody about it." After the death of Gennadius, his son Nestor finds a letter in which his Uncle Henry thanked Gennadius for the money which the latter had lent him for two years without interest. When the time is over, the son claims the amount. Henry, astonished, refuses to pay, declaring that Nestor's father had given him this money. But, not being able to prove that assertion, he is condemned to pay.

Ques. Will Henry have a right to secure a secret compensation after the judgment is over?

Ans. Yes, that is clear, from what has been said; for Henry was no longer Gennadius' debtor before God, as he had obtained the remittance of his debt. Therefore, the judgment is, at least materially, unjust and null, as based on a false presumption of a peculiar fact, that is to say, of a debt contracted and not paid or given up. Now, as soon as the judgment is materially unjust, one is not obliged to obey it in conscience. Henry, therefore, was unjustly forced to pay; consequently he is entitled to take back what he has paid by constraint. In fact, Nestor has received what was not belonging to him. Therefore his uncle would not wrong him, if he were to take back, without saying a word, the money he had to pay by force.

Case X.

Parents' Donation.

Augustus has two sons; one is endowed with remarkable qualities, the other is a coarse drunkard and a spendthrift. Besides the third of his property, left by a will to the first one, Augustus gives him some notable gifts, while recommending to him to relieve, in the future, his brother from poverty.

Ques. What must we think of Augustus?

Ans. Augustus, far from having committed the sin of injustice, has shown very praiseworthy prudence and wisdom; as by so dealing he has thought of the future of his spendthrift son, so that he might be able to secure some bread, after having squandered all his share. Therefore, we must not blame him.

Cases on Wills and Legacies.

Case II.

Value of the Will.

Sabas, having no consideration for his brother Potamius, appoints Placide, his second cousin, as his heir; but before he can sign the will, Sabas suddenly dies, and Potamius receives the inheritance. Placide, frustrated, keeps, without saying a word, one thousand francs, which the testator had lent him.

Ques. Has Placide a right to keep the above sum?

Ans. Yes, most probably. For, the party appointed heir by an illegal will is entitled to keep the inheritance by natural right, until he may be deprived of it by a judgment; moreover, he has a right to keep a part of it. For, in this case, no judgment interferes. Therefore, Placide may quietly retain the money which was lent to him.

Case III.

Value of the Will.—Nocturnal Spectre.

Vulpin, a cunning man, having two marriageable daughters, and not being able to give them a dowry, imagines a good scheme to get out of his trouble. Not far from the borough was a beautiful cottage, where was residing Euphemie, an old lady, without any near heirs. Desiring to secure the succession, Vulpin conceives a plan to secure it for himself or his daughters. During a very dark night, a great noise was heard in her house. Euphemie, frightened, trembling, cries out. Same noise takes place for many nights, with the same anguishes of the old lady. But Vulpin, who was the author of it, calls upon her, under some pretext, learns from her what he well knew, comforts her, and gives her the advice to leave this cursed house and to shelter in his own. She consents,

and is welcomed. Treated with the greatest care and consideration, in return, she makes a will in favor of Vulpin's daughters, and dies soon after.

Ques. 1. Ought Vulpin's daughters, having inherited in good faith, to give back the money, if they learn in course of time the trick of their father?

Ques. 2. Should Vulpin return the money in behalf of his daughters? *Quid*, or in case he had been appointed heir himself?

Ans. Question 1. Vulpin's daughters, who became heiresses in good faith, should be dispensed of any restitution. They have not acted unjustly in any way; on the contrary, with true charity, they have shown themselves very serviceable to Euphemie, and they do not possess what does not belong to them, as they have received it through a legitimate will.

Ans. Question 2. Vulpin should not make restitution for his daughters; because he was not the *cause*, but only the *occasion* of the will made in their favor; inasmuch as fear had no influence, in a direct and efficacious manner, upon the deed which has appointed his daughters heiresses; for Euphemie was free to do it or not; to revoke it, or pay the young girls' services by some other gifts. If he had himself inherited, the case should be resolved in the same manner, for the same reasons would be valid.

Case VI.

Will Destroyed by Hazard, and Reconstructed by Artfulness.

Chrysanthe, before dying, leaves to Adrian a will written by his own hand, in his favor. After Chrysanthe's death, the happy Adrian reads over the will with delight, then places it on a table, and goes to blow the fire. Unluckily the door opens itself, and a draught throws the sheet of paper in the fire. Adrian hastens and endeavors, but without success, to save it from the flames. But it is entirely burnt. Adrian, in despair, thinks to use a queer process. He imitates perfectly the dead man's handwriting and signature, and thereby reconstructs the whole will.

Ques. Should he by right make restitution to the natural heirs?

Ans. No, as having been appointed legitimate heir, through a valid will, immediately after the death of the testator, he, therefore, has evidently acquired a *certain* and *strict* right to the inheritance. Now, this right once acquired, cannot be lost by the destruction of the deed, but only by a voluntary assignment, or a legitimate transfer of property. Consequently, Adrian has not lost his right; for, why should the right in itself, or the strict right, be burnt and reduced to ashes, like the paper-title which is the proof of it? Not at all.

Now, if Adrian has a strict right to the inheritance, he cannot act unjustly by using such means, although they may be unlawful, in order to secure his rights, and he does not wrong the other relatives by shrewdly preventing their inheriting, as they have no right to it.

Case XI.

Legacies.

Mercorus had promised to leave one hundred louis to Publius, in his will. But being suddenly taken ill, and in danger of death, he calls his son Andrea, and says to him: "I wish you to give one hundred louis to Publius." Just after these words he dies, without leaving any written will.

Ques. Should Andrea give the money to Publius?

Ans. Probably, he is not held, at least on principle, to settle his father's legacy; because this manner of disposing of his property is not in accordance with the law; for probably a legacy is effective when it is based on a valid will, except in case the son should have promised his father to comply with his desire; as there would have been tacit contract, by which the son would be bound to settle the legacy; for the father, trusting in the promise of his son, abstains from transferring the legacy in a safer way. I said *probably*, as there exists a great controversy before the judgment; for there are two probable opinions. Some bind the heir, by natural right, to fulfil the dead man's desire; and others are opposed to it, by maintaining the regular disposition of the law.

Case XII.

Conditional Legacies.

Calopodius, before dying, without children, thus disposes of his property by a will. First, he leaves his mansion to his wife, and the value of this house to his niece, providing both live in the greatest chastity. Second, he leaves one thousand francs dowry to a young *orphan* girl, to be named by the parson.

But after a few years of widowhood, his wife marries again. His niece secretly commits the crime of fornication. The parson chooses a young girl having yet father and mother, very poor, old and infirm, intending to give her the above dowry.

Ques. 1. May Calopodius' wife and niece enjoy the above-named legacy without remorse of conscience?

Ques. 2. Should the dowry be given to the young girl having parents miserable and infirm?

Ans. Question 1. Yes, regarding the wife, she was able to marry again without losing the legacy. She has not violated the condition *to live chastely;* as, properly speaking, chastity is not lost by this marriage, inasmuch as a second marriage is chaste. As for the niece, it seems that there must also be shown some indulgence towards her, although she may have sinned, for *the fault was kept secret*, and she is commonly considered as a virgin. And it must not be presumed that the testator has wished to cast away his niece, in case she should secretly commit a sin against purity. And she does not appear herself to be obliged to confess that sin, while renouncing the inheritance.

Ans. Question 2. The priest is not to blame. The young girl he has chosen may enjoy the dowry, although she may not be a true orphan; because she has an equivalent situation. As the testator has wished to give the dowry to an unfortunate girl, in order to save her from danger, therefore his intentions are fulfilled.

However, in accordance with many theologians, if there was another young girl equally miserable, and a true orphan, she ought to be preferred; as, in case the intentions of the testator may possibly be fulfilled in their proper meaning, they should not

be fulfilled in a larger sense. But a great many think otherwise. For the girl who has infirm and incapable parents is more unfortunate than the one who has not any. Her soul and body run more dangers; and, consequently, the aim which the donator proposed to attain, is indeed properly fulfilled.

Case XIII.

Profane Legacies Showing a Lack of Legal Formalities.

Hector, heir of Matthew, by the latter's will, learns through trustworthy witnesses, or notes received secretly, that he has to settle certain profane legacies. He refuses to do so, because the law does not bind him.

Ques. Should Hector pay these legacies?

Ans. No, according to the probable opinion, Hector is not held to pay these legacies; unless he has made previous agreement or special promise. The reason is, that these dispositions, made by the testator's desire, are not valid, according to the probable opinion, even before the judgment, as they contain quite a lack of legal formalities; therefore, they ought to be considered as not existing. And do not make the objection that the heir knows the testator's wishes regarding these conditions; because such desire, although binding by the natural law, become null before the civil law, according to the probable opinion, as lacking the legal conditions required.

Case XIV.

Pious Legacies Having a Lack of Legal Formalities.

Toussaint, a pious man, before dying, recommends urgently to his son Germain, to whom he leaves a rich legacy, to have two hundred masses celebrated for the repose of his soul, and to give one thousand francs for the relief of the poor, and other pious uses. Germain, after his father's death, pays for ten masses, but neglects the other prescriptions of the dead man, as they are not in accordance with the conditions required by the law, and that consequently he is not held, in conscience, to fulfill them. His

confessor learning that, refuses to give him absolution, until he may have accomplished the prescriptions of his father.

Ques. 1. Should one, in conscience, pay pious legacies, even when they bear a lack of legal condition?

Ques. 2. Would the priest in this case be able to give absolution to Germain?

Ans. Question 1. Yes, this opinion is positive, whatever controversy may have existed formerly on this subject. It is the common opinion, followed by St. Liguori; because pious motives are relative to the church, and are submitted to her jurisdiction. No; the church is free and independent from any civil power for all cases submitted to her jurisdiction. . . .

Ans. Question 2. From what has been said, it is clear that the priest must not show any indulgence towards Germain, and that he cannot be granted absolution. . . .

Solution 1. If the heir is certain that the testator's desire was to spend some money for pious use, although it may not be proved, practically, however, he is bound in his conscience to comply with the desire of the testator; for one does not seek the proof when sure of the truth.

2. If the priest, after the death of his parishioner, shows a note in which are written various pious legacies, then, if one recognizes, or if two witnesses are able to prove they are written in the handwriting of the deceased testator, the son must obey his pious will. But if the priest has simply taken note of the legacies he will not be believed, unless there is another witness. Moreover, priests or confessors shall not receive such pious legacies until having called two witnesses, male or female. However, one witness only will be sufficient in addition to the priest.

3. Pious legacies are valid, and should be executed, even when they are stated in a will having no value among profane matters.

4. If the dead man, having commenced to write his will, is surprised by death, and has no time to finish it, this will, though null for other matters, has some value regarding pious legacies, in spite of its imperfect dispositions.

Case XV.

Pious Legacies.

Philibert, a rich and pious man, without *necessary* heirs, appoints as heirs, by a will in due form, three nephews of his, Marius, Marin and Marien, providing that each one of them shall spend one thousand francs for pious uses. But, after Philibert's death, Marius and Marien, more avaricious than pious, secure by a judgment annulation of the pious legacies. Marien does not know what to do. He asks for advice, and is answered in various manners.

Ques. 1. Have the heirs of Philibert a right to put aside the pious legacies by a judgment?

Ques. 2. Is Marien entitled to get a benefit from this judgment, without hurting his conscience?

Ans. Question 1. No; as these pious legacies are stated in a valid will. If they accept this will which favors them, they should also accept the burden which results from it. ("That he who looks for an advantage should also think of the trouble.") Do not say that these legacies may injure the rights of the heirs; for they are not *necessarily* heirs, and have no legal right to the legacy but through the will. Even if there were *necessary* heirs, their legitimate rights would not be wronged by these legacies, as might be supposed in this case. Are pious matters inferior to worldly things? If Philibert, by a lawful will, had left fifteen thousand francs to Bertha, a courtesan, could one contest and break this legacy? Why then should it be broken when it is in favor of the poor and orphans? Moreover, from what has been said in the former case, pious legacies must be paid even when showing a lack of legal conditions; especially if they are stated in a valid will, and do not injure the right of the heirs. Therefore, those heirs ought to pay those pious legacies, or renounce the will.

Ans. Question 2. Marien cannot enjoy the benefit of the judgment which breaks the legacies, although he may not have provoked it, it is clear from what has been said; he, therefore, should execute the legacy for what concerns himself.

Cases on Commodate, Deposit, Mandate and Loan.

Case I.

Commodate.

Exupere has lent to Tibule some carpets, to improve rooms where he shall receive a guest of high rank. After the latter's departure, as Tibule was taking up the carpets to return them, his house is burnt out by a thunder-stroke, with all things borrowed. He would nevertheless have been able to save them, if he had not been exclusively thinking to save his own furniture. Exupere claims of Tibule the price of these his carpets, who refuses to make up for the damage. From that, a suit in law takes place between them.

Ques. 1. Should Tibule make up for the damage?

Ques. 2. Should the tenant restore, if the carpets were stolen, without fault of his?

Ans. Question 1. Tibule should not give anything, if he was not able to save the carpets, because the damage ought to be attributed to the hazard, and that nobody is responsible for, not even before the law.

Ans. Question 2. No; because as there is no theological fault, there is consequently no obligation to make restitution.

Case II.

Unfortunate Borrower.

Pibert, a dealer, one morning discovers, with surprise, that the most of his goods has been stolen during the night. One or two days later, he learns that the thief has started away with his goods for another town, distant about fifteen miles. Immediately he asks Marc, his neighbor and debtor, to lend him a horse to run after the thief. Riding on his Bucephalus, he speedily arrives at

the directed place. But, alas! during the night, while lodging at the hotel, a new misfortune happens to him. The next morning he discovers, with astonishment, that his horse is stolen. Losing all hope to recover either his goods or his horse, he is obliged to return home without having done anything.

Ques. 1. Should Pibert pay the price of the horse to Marc?

Ques. 2. If Pibert, with the help of the horse, had recovered his goods, would he be entitled to keep the horse, not being able to secure otherwise the payment of what Marc owes him?

Ans. Question 1. Pibert is not held to pay for the horse, before a judgment, if he has placed him in a safe stable, closed to strangers; because the borrower, in his conscience, is not held to repair the damage happening to loaned things, if he has not made a gross theological mistake. Now Pibert, in this case, has not committed such a fault. Therefore, in his conscience, he is not held to any compen-ation for the loss of the horse.

Ans. Question 2. Yes, in his own judgment, the borrower could retain the horse as long as the proprietor of the horse has not paid his debt. Therefore the confessor could not overlook a compensation of that kind, unless he foresees greater inconvenience resulting from it. For the creditor who is not able to obtain payment, has a right, by the natural law, to pay himself in taking some of the debtor's property, at least in principle, unless provoking a scandal, or other inconveniences which would result from it.

Case VI.

Deposit.

Canut, treasurer for a prince, invests in private speculations the money trusted to him, without his master's knowledge, and by so doing secures a very fair profit.

Ques. May Canut consider the benefit as belonging to him, or should he make restitution of it?

Ans. Canut has a right to keep the profit secured with the help of the prince's money, because there results from it no wrong to the latter, since that money would not otherwise have

been made use of. The gain which results from it ought simply to be attributeed to the cleverness of that one who uses it.

Case VIII.

Mandatory.

Saluste, steward for a rich man, has orders every year to buy at a certain price all the clothes needed by the family, from a dealer named Cyrille. But Saluste buys cheaper from another dealer. Sometimes he even goes to another town in order to buy the cloth cheaper. He keeps for himself the surplus of the sum allowed by his master, and which he has not spent.

Ques. Is Saluste entitled to keep what he economizes by buying in another town?

Ans. Yes, because the gain he secures by going somewhere else and buying cheaper, is to be credited to his work, and peculiar cleverness. He therefore must not be blamed.

Case XIV.

Reason Which Excuses Usury.

Lucillus, had bought a large quantity of wheat, expecting to find a favorable opportunity to sell it with a large profit. In the meantime, Bibanius requests him to loan him fifty francs. "That is all I have," says he, "to buy some wheat; but if you agree to terms, I will give them to you, providing you pay me the interest over the legal rate, proportionately to the profit I would have had with the wheat." Bibanius consents, and later on he is obliged to pay twelve or fifteen per cent, on account of the profit he has prevented Lucillus from realizing.

Ques. What should we think of Lucillus?

Ans. Lucillus should not be bothered, as he has sustained this loss by lending his money. But he must carefully look out for the danger of the gambling passion.

Cases on Sale and its Species.

Case VII.

Remarkable Picture Bought at a Low Price.

Basile, a parson, buys for five francs of a peasant, a picture representing the Blessed Virgin Mary, blackened by smoke. The peasant rejoices, as he was never able to sell that picture, even at a lower price. The parson hastens to clean it, and place it in his church. Ten days later, a renowned English painter, walking by chance in the church, examines the picture and offers six thousand francs for it, for he has recognized a master-piece of Raphael. The parson is perfectly astounded. However, he thinks that it is necessary to inquire carefully about the price of the picture, and he consequently obtains twenty thousand francs from the Englishman, which money he devotes to some repairs in his church. But soon after, while thinking, he doubts whether he should give all his benefit to the peasant, or keep it for himself.

Ques. Shall the priest, in this case, give the money to the peasant?

Ans. Bazile must not be annoyed, as that precious picture was not estimated at more than five francs by both contracting parties, and there was neither swindling nor artfulness in the contract. You might make an objection perhaps, that this error is substantial? No, the error does not bear on the substance, but only on the value of the matter. The present contract is therefore *almost insignificant*, and he who is protected by Providence can keep his gain with full justice.

Case XIV.

Cunning Seller.

Valerius, a dealer, has imagined various smart tricks to secure

an advance on the price of his goods, without however getting much beyond the limits of a fair price. Often he tells lie after lie, oath after oath, while declaring to his customers that he cannot sell cheaper, that he has sold at higher figures to others, or that he loses on his goods.

Ques. Does Valerius act unjustly?

Ans. Valerius does not sin *in principle*, or according to the *common opinion*; for although by his lies and oaths he induces the customer to buy dearer, he is not however held to make restitution, because everyone knows that it is customary with dealers to tell such lies. Consequently, customers who would be caught by these words, should impute to themselves only the wrong which they suffer.

I have said, in principle; because, after what St. Liguori says, if the seller noticed that in one special instance the buyer is particularly deceived in paying too high prices, the seller would commit an injustice which should not be excused.

Case XVIII.

Auction Sale.

I.—Olympius, at an auction sale, desires to buy a picture, and requests his friends to abstain from increasing his bid, so that he can secure it at a low price. His friends comply with his request.

II.—At an auction sale of books, from the library of a deceased man, three priests agree that each time one of them wishes to buy a book, the others will abstain.

Ques. 1. Has Olympius acted unjustly?

Ques. 2. Might the priests, without injustice, make that agreement?

Ans. Question 1. No; because he has wronged nobody: not his friends, who have ceded to him their right willingly, nor to the seller has he put any obstruction to the liberty of bidding, and the buyer may take this course, which is neither base nor unjust. However, his request should not go so far as to hinder other buyers.

Ans. Question 2. The priests have not committed any injus-

tice, if there does not exist between them a regular agreement, but only an intention of not injuring one another. This case is as the former one, as there is no contract, so to speak. Otherwise, that will become injustice, because the seller may compel the buyers to remain perfectly independent, and that no one should prevent the higher bid. However, according to the probable opinion, there might be made an exception to this rule, in favor of relatives and partners in trade, because they act morally as one and the same person only, and they cannot be compelled to make a higher bid against themselves. Friends also would be, according to many theologians, excepted from this rule, being practically considered as partners.

Case XIX.

Miraculous Image of the Blessed Virgin.

Gertrude, a godly woman, but very poor, was not able to pay her creditors. The result was, that all her furniture was sold by auction, on a public square. There was, among the lot, a picture of the Blessed Virgin Mary, badly painted, and covered with dust. The woman cries out that she has a great devotion for that picture, because it can perform miracles; she insists that the picture might not be sold. The auctioneer and creditors reply that miracles exist no longer, and that the Virgin is smothered with dust. Witness to this, the priest Laurianus, who was there by chance, feeling indignant, conceives a scheme to punish them for their impiousness. He looks carefully at the picture, wipes off the dust, admires it; and consequently the price soon becomes higher and higher, until the debts were entirely covered by the price of the picture alone. Buyers, surprised, and believing it a precious picture, outbid also. Then the priest says to them: "It is a new miracle, Blessed Virgin Mary has sentenced to a great fine her detractors, and with an image of no value she has paid all the debts of the poor woman, and saved her furniture."

Ques. Has the priest Laurianus acted unjustly, and should he make restitution?

Ans. Must we accuse of injustice this pious priest, who, by charity and piety, came to help this poor woman, almost reduced to poverty? Must we condemn that, by the intermediary of which the Blessed Virgin Mary has worked a miracle? Decidedly, when considering his good faith, he must be excused. But what are we to think of the case in itself? I affirm, that when examining the matter as it stands, I find the priest blameless. For one is not unjust when using one's own right, and in this case Laurianus has used his right; he has not made use of any artful means to deceive anyone; he has not had any partners to make a fictitious higher bid; he has not made an agreement with anybody; but alone he has shown up the price in competition with many others. Therefore, he has not acted fraudulently. Do not say, the priest has made use of artfulness, by shamming, to outbid, as this outbidding was not a sham, but quite true: he ran the risk of it; he should have been compelled to keep the picture if the others had stopped. And do not say he has deceived others by admiring the image, as he has not shown himself at all as a connoisseur, and often ignorant amateurs seem to show admiration more than others.

Case XXII.

Compromise.

Bertulfe, having a discussion with Paulus regarding a meadow, and not being able to settle the difficulty, decided to bring the affair before the judge, when his adversary proposed to him to settle everything amicably, so as to avoid the costs and scandal of a suit at law. They consequently conclude a compromise, from which Bertulfe will have the meadow, but will have to pay one thousand francs to the other party. After the affair was so arranged, and Paulus had received the money, Bertulfe finds a deed which clearly proves that the meadow had been sold by his grandfather to Paulus' father, and that it therefore belongs to Paulus; but, without saying a word, he destroys the title and keeps the meadow.

Ques. Has Bertulfe a right to keep the meadow?

Ans. Yes, because the compromise is a peculiar contract which favors equally both parties, compels them to fulfill similar obligations, as it is supposed that the matter is doubtful on both sides; consequently each one abandons his rights, to avoid probable damages; that is to say, each one cedes the half of a doubtful right, in order to guarantee the other half. Therefore, the compromise once seriously made, nothing shall be restored by the one who learns later on that the land belonged to the other, and nothing can be claimed by the other party. Consequently, Bertulfe is entitled to keep the meadow as belonging to him, on the strength of a contract by which Paulus has abandoned his right, in consideration of the thousand francs obtained for so doing.

Case XXIII.

Commercial Dealings.

Armand, a merchant, when buyers refuse to him what he asks for, has the custom to lie, by declaring that he has bought these goods at such a price. It results from this that the buyers pay too high a price.

Ques. Has Armand a right to receive and keep that price increased by his lies?

Ans. Armand does not seem under obligation to make restitution, as he simply sins against truth, and not against justice, as long as he does not exceed the highest price; for he agrees on the price with his customers, and only receives what belongs to him. Besides, everybody knows that the dealers are accustomed to state such claims.

Cases on Renting, and Other Onerous Contracts.

Case IV.

Long-Term Lease.

Farmer Marculfe has hired for ten years, by a long-term lease, the estate of Palmatius, at a comparatively low rent. After the owner's death, his son, Narcisse, thinks immediately of putting up the rent, and suggests to the farmer that, if he will not pay one hundred and fifty louis, instead of one hundred, he must give up the place to another who is willing to pay a still higher rent. What shall the unfortunate man do? Caught between the hammer and the anvil, he consents, although reluctantly, and gives the price asked for.

Ques. Has the farmer a right to secure a secret compensation, if he has consented in spite of all to pay too high a rent?

Ans. That is not allowed to him, if he can prove his right through a judgment; because theologians permit a secret compensation only when one cannot recover his property by other means. It should be otherwise, if he could not prove his right; for instance, if the contract was not made under a form of authentical deed, or if the deed was lost. However, this compensation should not be blamed as being unjust.

Case VII.

Exchange.

Albin, a Frenchman, on his way to Spain, arrived at Bayonne, asks Lampinius, a money-changer, to give him Spanish money for French gold. The latter consents; but as Spanish money has decreased in value in France, Albin, who asked for a great quantity of it, undergoes a great loss, and the money-changer secured by it a large profit. But as soon as he arrives in Spain, Albin, for an

urgent matter, is compelled to return home. He calls again at the same money-changer's to make another exchange, and he has to sustain once more a great loss.

Ques. 1. Are these two exchanges in accordance with justice, as regards the money-changer?

Ques. 2. If Lampidius knew, by some private information, that Spanish money would soon lessen in value, should he righteously reckon to a foreigner, who ignores this fact, that the money is at its actual value?

Ans. Question 1. Yes; because as long as the merchant does not exceed the limits of a fair price, he does not sin against justice. The money-changer, who is only a money-dealer, is in the same case. Now, Lampidius did not exceed these limits, although he may have accepted French money at its least value, and by exchanging it for Spanish money at its greatest value. For, if one exchanged bread at lowest price for wine at highest price, there would be no injustice. Therefore, Lampidius is not guilty; because, while accepting French money at its mean value, he has given in exchange Spanish money at its highest value. Now, if he was entitled to do so a first time when Albin was starting, he had a right to do it again when he came back. No matter whether Albin may have lost a great deal by it, that merely took place accidentally, and Lampidius, in this loss, has only acted passively. Therefore he has not behaved unjustly, and he must not be hindered nor blamed.

Ans. Question 2. Yes; because that money, according to the common appreciation, has preserved its material value. It would be quite different if it were stated that this money has lost some of its former value: because, in this case, the money-changer should not have paid for the money at its true actual value.

Case XI.

Money Dealings.

Candid, a merchant, often borrows money from Vulpin, and subscribes promissory notes in acknowledgment of the debt; but Vulpin enters Candid's account in his books, not as a simple bor-

rower, but as if it was between them a statement of account. He proceeds in the following manner: if, for instance, Candid borrows ten thousand francs, reimbursable within six months, he requests him to subscribe a note for ten thousand three hundred, in order to be able, when the bill becomes due, to claim not only the principal, but also the interest for six months. Then, he enters to Candid's debit ten thousand three hundred francs, and to his credit nine thousand nine hundred and ninety-one (as credit for the amount of the note, with deduction of six months' interest).* He considers both amounts productive of interest, in such a way that Candid finds himself debtor for the interest on the difference between ten thousand three hundred francs and nine thousand nine hundred and ninety one. Now, at the end of three months, he claims the interest on that difference, besides one per cent. commission on the sum loaned, declaring that, in case of non-immediate payment, the sums claimed for will constitute a new principal.

Ques. 1. Was Vulpin entitled to add on the note the interest to the principal?

Ques. 2. Had he a right to claim interest on the difference of the two amounts entered in his book?

Ques. 3. Could he claim a right of commission for the money loaned?

Ques. 4. Could he righteously add to that difference the commission, and thereby constitute after three months a new principal?

Ans. I answer affirmatively to the first question. The notes, in fact, are productive of interest only at maturity and from the day of protest. Thus, he has been able to repay the loaned sum productive of interest from the very day of the loan. In fact, interests being effectively considered as part of the principal, they will produce interest through being due for less than a year. This inconvenience would be done away with by simply specifying on the note the principal really loaned, with obligation from the borrower to pay interest from the day of the loan. But such

* I recall this case, not to criticise its solutions, but to show with what care questions of usury have been deeply examined by those Jesuits having pretended to reject with horror and in principle even the simple loan with interests. There is another case, yet more curious and complicated, the Case IX. of Onophrius and Argyrophilus.

method of proceeding, unusual in business, would render harder the circulation of drafts. It therefore seems reasonable to presume that debtors submit willingly to such a prejudice in order to facilitate business transactions, inasmuch as they are to avoid it by paying off at the appointed time, or by renewing the note.

I answer negatively to the second question; for, in that way, Vulpin has capitalized, the very day of the loan, the interest not yet due on ten thousand francs, and even the interest on that interest. In fact, the difference, whose interests he claims, is composed: 1, of the sum of three hundred francs, interest of the loaned principal, and which have been fictitiously added to it, though not being included in the loan; 2, of the sum of nine francs interest on these same three hundred francs.

I answer negatively to the third question; because the loan has not been preceded by any promise compelling Vulpin to procure the sums to be put at Candid's disposal. It was therefore a question here of a simple loan only, on the strength of which the loaner, although a banker, has no further right but to claim legal interest.

I answer to the fourth question, by saying, that those sums, not being due, cannot be productive of interest.

Case XIII.

On Security.

Ques. Is a wife entitled to become security without her husband's knowledge?

Ans. Yes, by natural right, if she has property which she is able to dispose of. As regards positive right, it is necessary to study the laws of each country. In France, she cannot do so in principle, because the wife is not granted the management of her estate, neither can she make a contract or sign a deed without the authorization of her husband. There are, however, some cases in which the wife would be held, in conscience, to give this security, at least after the death of her husband, or after separate maintenance; for instance, when applying urgently to borrow for her husband, overwhelmed by debts, she could not obtain money unless she

promises to pay herself in case of need, in place of her husband, and she should have to promise to pay in reality.

Case XV.

Guaranty.

Menesippe, expecting goods from England, and fearing they might be lost at sea, writes to Gratien to look specially after them. The latter replies, that he will hold himself responsible for the whole cargo, providing Menesippe will give him one thousand francs. The goods were worth ten thousand francs; and Gratien possessed but five hundred francs. The goods arrive in good order all right, and Gratien receives one thousand francs.

Ques. Is Gratien entitled to keep these one thousand francs, though he would not have been able to repair himself all the damage, if the goods had been lost at sea?

Ans. It seems that he has a right to keep half of it, and nothing more; because, in case of wreck, he would not have been able to pay more than half of the loss by giving away all he had of his own. Therefore, it seems fair that he keep half of the money. Others would answer, that Gratien has a right to keep the whole; because, in case of misfortune, he would have lost a great deal more. Others would say, that he should not keep anything; because the contract was null, because he was able to guaranty only half of the value of these goods.

Case XVI.

Mortgage.

1. Eusebe, Gaspard's heir, having noticed that the succession was encumbered with mortgages, will accept the inheritance only on condition of not paying debts beyond the amount of assets, in order that one might not compel him to pay more than he would have to receive. After having received the inheritance, he pays in full the different creditors on note of hand. But later on, Hilaire, a mortgagee, calls upon him and claims what is owed to him. "You come too late," says Eusebe, "all the succession has

been used up to pay the debts." "You have acted badly," says Hilaire; "I, the mortgagee, had a right to precede all others. So you should be responsible with your own property."

II. Barberin and Barberius, Antoine's creditors, had secured a mortgage on his property. Florus and Florence had only obtained written promises to prove the value of their debts. After Antoine's death, Philon, his heir, not knowing the amount of debts and neglecting to draw a statement of the estate, takes hold of the inheritance. The two mortgagees immediately claim what is owed to them. But the legacy being already spent, they do not obtain full satisfaction. Consequently, Barberin and Barberius, putting forward their right of precedence of others, ask to be paid with the heir's own property, before the creditors holders of notes of hand.

Ques. 1. Should Eusebe, in the first case, pay Hilaire with his own property?

Ques. 2. Should the mortgagees, in the second case, be paid before others, not only with the dead man's property, but in the absence of it, with the heir's property?

Ques. 3. Should the heir, who has neglected to draw a statement of the estate, give satisfaction to the creditors with his own property, even in his conscience?

Ans. Question 1. The mortgagee ought to be paid with the heir's property, as he has the strict right to be preferred, at least in a worldly point of view. But in a true spiritual sense of justice, the heir must not be compelled to do so, if he has not made a grave theological error.

Ans. Question 2. The mortgagees ought to be preferred to others on the strength of their mortgage only. Therefore, when the succession encumbered with mortgagees is dissolved, their rights do not exist any longer, as the title of their privilege has disappeared. Therefore, they ought to be treated as other creditors.

Ans. Question 3. The heir who takes hold of the inheritance without drawing a legal statement of the estate, is compelled, in a worldly point of view, to pay the debts with his own property, if the legacy funds are not sufficient. But, most probably, he is not held to do so in his own conscience; because nobody can compel

him, by natural right, to pay the testator's debt, unless he has received a gift from him. Therefore, if the debts exceed the amount of the legacy, the latter funds being exhausted, he owes nothing more.

Case XVII.

On Betting.

Nicon knows three candidates for a government office; there are no others; one of them must be chosen, but which, nobody knows. Nicon bets ten francs with each, that he will not be elected. He is sure, in this case, to win against two and to lose with the other, and so to win twenty francs, and to lose ten only. He thinks he can make this bet, because he has no certainty for any one separately. However, later on, he wonders whether he has acted according to justice.

Ques. Has Nicon a right, in this case, to bet and to keep the money?

Ans. Yes, probably; because there are just three contracts separately; for one is placed in a different situation on account of the other, and in each one Nicon runs the risk of losing; as with every one who bets, he doubts of the result. Therefore, as he may lose with one, he may on the other hand win against another. Moreover, every one of these contracts considered separately is lawful; because one does not prevent the other being just, and one cannot say which of the three contracting parties will be wronged.

Case XXII.

On Gambling.

Lucas, a passionate gambler, but playing badly, asks Sylvius, whom he knew as being very smart, to play a game with him for a big stake. Sylvius declines, considering as illicit the gain which would result from a disproportionate game. "Well," says Sylvius, "if you like to amuse yourself, let us gamble for fun only, or let us be gambling for prayers, which the loser will have to say in behalf of the winner." Lucas declines, and still insists once more, with Sylvius, but at last consents. First, the latter is very lucky;

but later on, getting tired of playing, he takes so little care about the game that he often forgets to take up a counter, so favoring, without knowing it, his fellow-gambler. Lucas, who notices the fact, does not mention it. Consequently, carrying the day against his adversary, he wins a large sum out of him.

Ques. Has Lucas been acting badly by keeping silent on the omission of his adversary, and should he make restitution?

Ans. No; because each had no other duty but to look at his own cards: therefore the gambler who is noticing that his adversary is mistaken in marking or counting, is not liable for it if he does not caution him, as he does not commit any fraud, nor does he deceive his companion; but it is the latter, who by his carelessness, or absence of mind, wrongs himself. Then he, therefore, ought to undergo this loss as a punishment for his carelessness.

Case XXIII.

For the Want of One Trick, Martin Lost His Donkey.

Martin, a very shrewd peasant, riding on his donkey, was going down town on business. Having stopped at an inn, he meets there with strangers busy at gambling. Invited by Bernard to play a game he consents, knowing he was clever enough. First, luck smiles upon him; but next, it turns against him so badly, that he loses all his money. With the hope of getting back what he had lost, he decides to continue. Having only his donkey left, he plays on it. The gamblers strive with nervousness. The chances are even. Bystanders are waiting for the end with anxiety. Cards are dealt for the last time. But, alas! Martin, in despair, is beaten for one trick. From this story is the saying: "For want of one trick, Martin lost his donkey." Then he came back home on foot, sorrowfully, and had to listen to the lamentations of his wife. But where would be the trouble in this case? There would not be any, if it had not happened that Bernard, noticing Martin did not hide his cards properly, had looked at them by chance.

Ques. Shall Bernard give back the donkey?

Ans. No; if he has looked at his adversary's cards on account

of the carelessness of the latter, and if he has not sought to know them before, and if he has not marked them; because this act of looking at the cards, without malice, is not considered as swindling, but as a sort of smartness, commonly approved by gamblers. It would be the same if he had learned to know the back of the cards of his adversary, without having marked, or known them beforehand.

BOOK SECOND.

Treatise on Peculiar Situations.

I. Laics.— II. Ecclesiastics.— III. Regular Friars.

PART FIRST.

Lay Situations.

Already, in reference to the fourth precept of the Decalogue, we have spoken of the various and reciprocal duties of superiors and inferiors. In the following treatise, we will talk on the duties which are connected without mutual interest, especially concerning public officers.

CHAPTER I.

Judge's Duties.

1. The judge is held to pass a judgment in accordance with the law and the regulations stated by the law. . . .

In criminal affairs, the person accused must be favored, unless the crime is evident.

When in doubt regarding the property, and also the possession by right or by fact, it is necessary to judge from the more probable reasons. . . .*

* The contrary proposition, imagined by the ancient Jesuits, had been condemned by Innocent XI.

But Gury remains silent on the question of what it is advisable to do in case two opinions are equally probable, and when one of the parties would be a friend of the judge. Without any doubt, he accepts the solution of a man of the highest intellect belonging to the Company of Jesus, Gregoire de Valence, "the illustrious man" of the Jesuit Clair.

"One asks if a judge may, without showing a personal preference, decide on his judgment according to his friend's interest, on the strength

When in doubt regarding the property alone, it is necessary to judge in favor of the true possessor. . . .

2.—Ques. Should the judge condemn: 1, a person accused, that he considers guilty, only on his private information? and, 2, a man whom he knows to be innocent, but who is legally declared guilty?

Ans. 1. Certainly not, after all theologians. . . .

2. There is controversy. St. Thomas affirms it. St. Bonaventure denies it. . . .

3.—Ques. Is a judge held to make restitution of what he has received by an agreement, in order to pass a judgment?

Ans. 1. Yes, if he has received it, to pass a just judgment.

2. If it is for an unjust judgment, he should restore before he has passed his judgment; but after that there is controversy, from what has been said on the subject of the contract for a shameful matter. (Book First, No. 760)

Ques. Is one held by a judgment: 1, on the justice of which one doubts; or 2, of the injustice of which one is certain?

Ans. 1. Yes, positively; for the presumption is in favor of the superior, or the judge. . . .

2. No, by principle; unless if there results from it some scandal or disorder in the state. . . .

Appendix First. On jurors.

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Appendix Second. On arbiters.

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CHAPTER II.

Obligations of the Advocates and Attorneys.

13.—Ques. Does an advocate sin, and how, when defending a

of a probability applicable indistinctly to one or another opinion, where a point of right divides the jurisconsults.

"I say, firstly: if the judge considers that both opinions may be equally probable, he may *lawfully*, in order to favor his friend, judge in accordance with the opinion which authorizes the pretension of his friend. Moreover, he might, for the purpose of serving his friend, judge *sometimes according to one opinion, and sometimes following the contrary opinion*, provided, nevertheless, that scandal may not result from this." (page 14.)

just cause by unjust means; for instance, by substituting a new promissory note for a lost one?

Ans. 1. He sins against fidelity and truth, more or less, proportionately to the injustice of the means used.

2. *In principle*, he does not sin against justice, as one supposes a just cause. . . .

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CHAPTER III.

Solicitor's Duties.

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CHAPTER IV.

Duties of Registers and Notaries.

22.—Ques. Should a notary make restitution to the treasury, if, when drawing up a deed of sale or an inventory, on the request of the parties, or even of his own consent, he does not insert the true price of the matter, but an inferior quotation, in order to pay a lower tax.

Ans. There is controversy.

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CHAPTER V.

Duties of Prosecutors and Defendants.

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25.—Ques. Is the defendant, when questioned by the judge, held to confess the truth?*

Ans. 1. No, if he is not questioned legitimately; as happens when the judge is not legitimate, or when he does not follow legal proceedings; for instance, if he were questioning without preliminary accusation, or even when the offence appears to be only half proved.

2. Yes, if he is questioned legitimately; because he should obey the just orders of the judge. Except, according to the prob-

* See note, page 157.

able opinion, if it is a question for him to suffer a severe punishment.

26.— Ques. Is it allowed for an innocent defendant to run away, or resist the armed force?

Ans. Yes, it may be allowed for him to run away, or escape from the hands of the armed force.

Ques. Has a defendant, truly guilty, a right to run away?

Ans. Yes, if he is not yet sentenced by a judgment; because no one is held to submit to a penalty before the sentence. It is the same if he is sentenced to a very severe punishment, and if he should be imprisoned until he gets through.

But the more common opinion denies it, if he has been already sentenced to imprisonment: because the guilty man is held to submit to a righteous judgment. Except, however, according to a few, if he is not given his necessaries, or if the prison regulations are very hard.

Ques. Has the guilty party a right to run away, even by doing some harm to his jailers?

Ans. Yes, because he uses his right, and does not wrong anyone; unless charity suggests to him the use of another scheme, not causing too great harm to his guardians. However, he is not allowed to seduce them with money, because the latter, being under obligation not to release the prisoner, would co-operate in the sin.

CHAPTER VI.

Witnesses' Duties.

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28.— Ques. To what is a witness held who has not told the truth by ignorance, accident or omission, and unwillingly?

Ans. He should confess his falsehood, and repair the wrong the best he can; however, he is not bound to repair the prejudice already accomplished, because he has not made any theological error. The same should be said, even if he had committed a venial sin, as has been said regarding Restitution, No. 662.

Ques. What are we to think of those who make up or alter deeds

or notes, to replace lost titles, or to protect their true, good right?

Ans. 1. There is a venial sin of lying, because the promissory note, whatever it may be, is different from that which proves good faith in justice.

2. One is occasionally liable to sin grievously against charity, even with respect to one's self, by running in danger of suffering a very severe punishment, if one was arrested as a forger.

3. One sins by no means against commutative justice, and consequently, is not compelled to make any restitution.

29.—Ques. Is a witness held to reveal a crime kept entirely secret, in case he is the only one who knows it?

Ans. 1. Yes; according to the law in force in France. . . .

2. No; most probably, by the Roman right, which requires two witnesses to declare the defendant guilty, even if he confesses the crime: thereby the axiom: "Only witness, witness nul."

30.—Ques. Does a witness sin, and how, by hiding himself, not to be summoned to appear in Court?

Ans. 1. He does not sin against legal justice, that is, against obedience; because no one is held to comply with the order of a superior before being compelled to do so; 2, nor against commutative justice, as he behaves in a merely negative manner. He however is likely to sin against charity owed to his fellow-brother.

Ques. If a witness, who is legitmately questioned, hides the truth, without telling a lie, should he make restitution?

Ans. No, probably; because in this case the witness behaves in a merely negative manner, and is not held to tell the truth, unless by order of the judge; and consequently, by hiding it, he sins solely against the obedience owed to the judge, or against religion, because of the oath taken.

CHAPTER VII.

On Duties of Physicians, Surgeons and Pharmacists.

31. . . . They are compelled to follow the sure and founded

prescriptions of doctors, at least ordinarily, as the danger of the disease cannot be injured by probabilities.

A physician sins grievously . . . if he uses non-tested medicines to make a trial. . . .

33.—Ques. To what is a physician especially held, regarding the soul of the patient under his care?

Ans. He should, in principle, and under heavy penalty, caution him of the danger he is running into, and of the necessity for him to receive the sacraments, in order not to die without absolution, the viaticum, and extreme unction. . . .

34.—Ques. . . . Is the physician entitled to use doubtful remedies?

Ans. No; but in this case he should wait, and leave the patient to the influence of nature. This is the opinion of St. Antonin, who said: "If the physician doubts whether the medicine will be useful or injurious, he is doing wrong in giving it, because if in doubt, he should preferably leave the patient in the hands of the Creator."

CHAPTER VIII.

On Duties of Rural Constables.

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36.—Ques. Should rural constables always prosecute offenders?

Ans. Yes, in every instance that the damage is important, unless the offenders themselves offer a secret compensation. They may occasionally not act so severely towards the offenders, if the damage is of slight importance, if it is not customary, or if it should be presumed that the proprietor did not wish to prosecute the offender, because the latter is very poor, and is not in the habit of doing wrong. But rural constables must be careful not to show more lenience than is necessary.

CHAPTER IX.

On Artists and Laborers.

37.—The confessor should question them carefully. For the

most part of the time they do not mention in their confession wrong doings and sins concerning their condition.

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PART SECOND.

Situation of Clergymen.

CHAPTER I.

Common, Positive and Negative Obligations of Clergymen.

ART. I. Positive obligations.

They are bound: 1, to sanctity of life: 2, to celibacy; 3, to ecclesiastical robe and tonsure; 4, to canonical hours.

42.—Ques. Is the obligation of celibacy universal in the church?

Ans. The church tolerates some exception, in those among Orientals. In Eastern countries, priests can never marry after the sacerdotal ordination and even after the deaconry; but those who are married before the deaconry can attain to the ultimate orders, and also live with their wives.

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ART. II. Negative obligations of clergymen, or what is forbidden to them.

98.—As a general rule, priests are forbidden to practice what is not suitable to the ecclesiastical state; for instance, to be dealers, inn-keepers, physicians, surgeons, except under extraordinary circumstances; to be judges in criminal cases, attorneys, defenders, notaries in secular agreements, to go out with arms, to enter saloons and many other places; but above all: 1, to reside with women; 2, to take a part in games of hazard; 3, to hunt or carry arms; 4, to engage in commercial transactions.

. . . . . .

99.—*Do not stay among women.* From the Garment comes the Scurf, from Woman the Iniquity of Man.

. . . . . .

105.—Ques. Is it allowed to clergymen to buy shares from joint-stock companies?

Ans. There are three different opinions:

The first one affirms it in all cases.

The second one denies it in all cases.

The third one makes a distinction between companies called *commercial* (banks, trusts, commercial companies), and *industrial* societies (railroads, mines, factories); shares of the former should not be bought by clergymen, but they may purchase some of the latter.

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CHAPTER II.

Special Obligations of Clergymen.

ART. I. Obligations of bishops.

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ART. II. Obligations of parsons.

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ART. III. Obligations of prebendaries.

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Appendix 1. Privileges of priests.

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Appendix II. Advantages of priests.

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PART THIRD.

Situation of Friars.

CHAPTER I.

On the Nature of the Religious State.

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140.—Ques. To what is a bishop held towards the young ladies who wish to enter a religious order?

Ans. He is held, under a heavy penalty, by a statute of the Council of Trent, to examine himself, or if he is prevented, by a vicar or a delegate, the intention of these young ladies, before their taking the veil, also before the profession. But the omission of one of these two examinations would not be considered a serious matter. Moreover, the profession would be valid if both examinations were omitted, provided the young ladies may have been free of mind when making their profession. Such an examination is required, even if the convent in which the young ladies should enter has been deprived of the episcopal jurisdiction; because the bishop acts, in this case, as the delegate of the Holy See.

CHAPTER II.

On Religious Vocation.

151.—Do parents and guardians grievously sin, by leading away their children or pupils from the religious state?

Ans. 1. Yes, if they lead them away unjustly, by threats, violence, artfulness or intrusive requests; because they so prevent them from obtaining a great blessing to which they have a right, and they expose them to the great danger of losing their eternal salvation.

2. Yes, for the most part of the time, even if they lead them away only by requests or promises; because they can not do so without causing them a great prejudice.

Ques. Do children sin, by entering a religious order in spite of their parents, or without their knowledge?

Ans. No, in principle, though this behavior may not be generally profitable in practice; unless the children may have a good reason to fear unjust vexations or impediments; because, unless parents may be opposed to it for a legitimate purpose, children are entirely free to choose their profession.*

. . . . . .

*Marotte does not dare, on this delicate point, explain himself so plainly. But the reader will readily understand the meaning of the following words:

"Ques. In which instance should children especially show respect and obedience to their parents?

CHAPTER III.

On the Obligations of Vows.

ART. I. Vow of poverty.

153.—A friar, bound by a solemn vow of poverty, that is to say, having made a *solemn* profession to an Order approved by the Holy See, at least from the strength of the ecclesiastical law, and putting aside all Pontifical dispense, is completely incapable in *particular*, that is to say *personally*, of possessing any temporal goods whatever, property which might be valued, even *with the permission of his superior*. (Statutes of the Council of Trent, Session xxv., c. ii.) But the community may, either by itself or by its members, acquire and possess properties, unless its statutes may be so opposed. Wherefrom is the well known axiom of the Canon right: "All that a monk acquires, he acquires not for himself, but for the monastery."

Consequently, a friar having made profession, is perfectly incapable to make or assign any deed of property concerning a property belonging either to the monastery, or to his parents, or to strangers; therefore he is not entitled, without permission, general or special, of his superior, to dispose of anything, either legally, or in due form, by acceptation, donation, sale, borrowing, etc. . . .

157.—Ques. Is a friar allowed to give what he has saved out of what he is supplied by the monastery with for his own use?

Ans. No, as a general rule. . . .

Ques. Does a friar sin by receiving from a stranger money to spend as he chooses for pious use?

Ans. Yes, if he receives it as solely for himself, to give it in his own name.

158.—Does a friar sin against the vow of poverty by refusing what is offered to him by strangers?

"Ans. It is when it is a question to choose a situation of life; they should then ask and follow their parents' advice, unless it may be recognized that the desire of their parents is opposed to the will of God." (*Petit Catechisme*). Who will have ability to recognize the will of God? The confessor!

Ans. Yes, if it is a question of things already acquired; for instance, legacies, salaries as a reward for his work, gifts already accepted, etc., because the monastery immediately acquires a right in those things, according to the above-quoted axiom. . . .

161.—A friar sins against the vow of poverty, if, without the consent of his superior, in the monastery or outdoors, even for what concerns clothing or food, he accepts, retains, exchanges, gives, or lends something. Also if, without permission of his superior, he borrows or lends money to strangers.

He sins against the vow of poverty by eating or drinking with strangers without permission of the prelate; because by receiving something without permission he acts as proprietor. In general, however, there is no mortal sin.

He sins against the vow of poverty, by retaining beyond the appointed time a thing which he was allowed to make use of, by using it for another purpose, or by spoiling it; by keeping it with a *spirit of master*, that is to say, with intention to spare it from the free disposition of his superior; for instance, by hiding it so that it may not be seen; and he cannot be excused because he was previously granted the permission to use it.

He sins against the vow of poverty by buying anything, even for the community, without permission of the superior, because by so doing he is acting as a proprietor.

ART. II. Vow of chastity.

164.—The vow of chastity should be considered as more important than the vow of poverty.* . . .

ART. III. Vow of obedience.

It is the most important of all religious vows, for it is through it that the friar offers and consecrates absolutely to God his most intimate and most excellent gifts, his independence and intellect.

*In his general theory on vows made "with intention to make a promise, but with intention not to be bound to it," J. Gordon draws up a very pretty illustration concerning the vow of chastity: "The priest," says the learned man, "who, when being sworn to a sacred order, purposes expressly not to bind himself to chastity, (I mean the obligation, not the execution), is not held on the strength of the vow connected to it, to keep to chastity." (Page 310).

CHAPTER IV.

Privilege of Regulars.

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Appendix: On the actual state of Regulars in France.

At the end of the 18th century, there was in France a great number of monasteries for men and women. But in the awful revolution of all things which followed, all were dissolved. . . .

184.—Ques. Should vows of friars in France be considered now as solemn?

Ans. Yes. . . .

186.—First objection. Civil law is opposed, in fact, to a solemn profession; for it declares that all citizens are qualified to make contracts, or receive legacies.

Ans. Civil law cannot oppose, by any means, either solemn or perpetual vows, because the nature of the vow being perfectly spiritual, cannot be attained by civil law, not even indirectly; for if it were otherwise, civil power could abrogate the laws of the church, which would be contrary to reason. . . .

Second objection. It is not permitted by the law to renounce a succession which has not yet commenced. Therefore, a friar can not renounce, before his profession, his future properties; for instance, to a filial inheritance, when his father is still living. But he could not do so after his solemn profession when the succession has commenced, as he has become incapable to dispose of anything whatsoever. Therefore, this law makes impossible the solemn profession.

Ans. 1. A friar, even after a solemn profession, may, with his superior's consent, accept an inheritance, gift, or legacy for the monastery, as is permitted by the statutes of the canon right, although he has no right to accept anything for himself; except in a small number of religious orders, the regulations of which are opposed to it.

Ans. 2. A friar, before his solemn profession, may, without fearing that the civil law may be opposed to it, dispose of his future property to parties, for instance, to his brothers. . . .

Cases on Special Situations.

LAY PERSONS.

Case I.

The Judge.

Judge Lambert, although knowing quite well that Casimir is innocent, though under a terrible accusation, sentences him nevertheless to imprisonment for life; because, on account of allegations judicially proved, it appeared to him that the man was really guilty. In course of time, deeply anxious, he asks whether he has acted rightly, and what he should do.

Ques. May or should a judge sentence him whose crime is juridically proved, but whom, through private information, he considers perfectly innocent?

Ans. Theologians are divided in their opinion. St. Thomas says yes, because the judge should pass judgment in view of the common good, from allegations and proofs. But St. Bonaventure denies it, because the judge should never condemn an innocent person. This last opinion must be followed, according to St. Liguori, in great criminal cases; especially if an innocent man is liable to be sentenced to death.

Case II.

The Judge.

Judge Pestus, greedy for money, receives gifts from his clients, being convinced that this is permitted to him, whereas he is always disposed to render justice to every one. One day, Philon calls upon him: thinking his suit a bad one, he brings him a present, in order to win his benevolence. Pestus, after having

thoroughly examined the case, finds that it is a good suit, pronounces a judgment in favor of Philon, and retains the present. Another time, doubting whether he ought to judge for Titius or for Caius, whose arguments are equally good, he decides in favor of Titius, from whom he had received a gift.

Ques. 1. Is it allowed, is it just, that a judge should receive presents from the defendant?

Ques. 2. Is he entitled to keep the presents which he has accepted in a suit, either just or unjust?

Ans. Question 1. The judge surely sins by accepting those presents; it is contrary to all rights that justice should be bought so easily by means of tips. However, most probably, he does not sin against justice, and he is not compelled to restitution, because the gifts are freely made to him.

Ans. Question 2. He cannot keep at all the presents received to pass a righteous judgment, because that cannot be the object of a contract, as being justice, which is priceless. But probably he may keep the presents received to pass an unrighteous judgment.*

Case IV.

The Barrister.

Florimond, a lawyer, was defending a cause probably good, but in the debate he notices, that all the chances, even the strongest, are against it. However, he continues to defend it.

* Busembaum explains more plainly this very delicate case:

"Ques. Is a judge compelled to make restitution of the price he has received to pass a sentence?

"Ans. If he has received it for the purpose of a just sentence, he should make restitution; because it was his mere duty to render justice to the defendant, independently of what he received; and consequently the defendant has had nothing for his money but what was already his own right. But if the judge has received the gift for an unjust sentence, he is not held, by natural right, to make restitution, as per the teachings of Sanchez, Soto, Navarre, G. de Valence, Molina, Tolet, Lessius, de Lugo, and a great number of other theologians, among whom are Moya, the apologist de Taberna, etc. The reason is, that the judge was not held to pass this unjust sentence: it turns to the defendant's benefit, and through this injustice the judge is exposed to a great danger, especially with regard to his reputation, in case he happens to be caught at such a dealing. Now, to run such a risk at the service of another man, is a matter really worth a big pecuniary reward." (Page 348).

Ques. Should Florimond have kept silence when he found out that the opposite party had better arguments than his own client?

Ans. Florimond has not sinned, neither against justice nor charity, by continuing a cause yet *really probable*, although he considers the adversary's cause as more probable, because he hopes that the truth will be brought to light. Lawyers are not compelled, like judges, to follow only the opinion which seems to them to be most probable.

Case VI.

The Defendant before the Court.

Palemon, having previously committed secretly a most grievous theft, is easily suspected to be the offender, on account of his bad antecedents. Consequently, being seized by policemen, he is taken to jail. He tries to escape several times, but without success. On being questioned by the judge, he denies his crime several times. He is thereby sentenced to imprisonment for life. However, he does not stay long in his cell, for he makes a hole in the wall, with tools furnished him by Paul, his friend, and so escapes. Arrested anew, he defends himself by knocking down the policemen, tearing off their clothes; he luckily escapes from their hands, and hastily runs away, until he has crossed the frontier.

Ques. 1. Had Palemon a right to deny his crime?

Ques. 2. Was he entitled to escape from prison, either before or after the sentence, even by making a hole in the wall, or by breaking in the doors?

Ques. 3. Has his friend Paul sinned grievously by supplying him with tools, which helped him to escape?

Ques. 4. Has the culprit sinned by defending himself against the policemen while escaping from their hands?

Ans. Question 1. Yes; the reason is, according to the common opinion, that the prosecuted party is not compelled to confess his crime, if there is not against him at least a half proof. Now, when questioned by the judge, he does not seem yet to be convinced of his crime, for he is only suspected on account of the

theft he had previously committed, but this suspicion is not sufficient to make up at least a half proof. Moreover, according to a great number of theologians of the highest authority, a guilty party is not held to confess the truth, even after a half proof, when it is a question of a death penalty; because it is a heroic act, so it seems, to acknowledge one's self guilty; and the judge is not supposed to insist on this point rigorously. During the examination, he tries especially to judge the culprit from his own declarations, and to declare him guilty out of his own words. St. Liguori admits the probability of this opinion, which has the more authority, because of the new method of examining now used in France and in other countries. The defendant is not questioned directly on what he has done, but on the various circumstances alleged by the witnesses.

Ans. Question 2. 1. It is allowed to the culprit to run away, according to the common opinion, if he has not been sentenced yet; because no one is compelled to undergo his penalty before the judgment. Some affirm it, even if the guilty party has been sentenced to a very severe penalty, and if he is sentenced to imprisonment preventively, until he has undergone his indictment. 2. But the most part of them deny it, if the imprisonment has been fixed by the judge's sentence, because a just sentence must be obeyed, unless, however, if the prison-life is very hard, because it would be a *heroic* act to suffer a very severe penalty, when one can easily escape it. 3. Now, considering that it is not forbidden the guilty party to escape, he does not sin by breaking in the doors or by making holes in the walls; because, if the end is permitted, the means, insignificant by themselves, are permitted also. It is St. Liguori's probable opinion.

Ans. Question 3. No; because, if it is occasionally allowed to the culprit to run away, it is not forbidden to help him in his escaping, not only by good advice, but also with tools; for instance, with ropes, as long as such escape is not dangerous to society.

Ans. Question 4. Palemon sinned by resisting justice's agents, and tearing off their clothes; because it is never permitted to resist authority. However, his sin might be excused, if he had

escaped without resistance from the hands of the policemen. Even the action of knocking down a policeman, and other facts of that kind, for the purpose of an escape, when it is a question to avoid so great a penalty, should be looked upon as a trifle, and even as nothing. At least the sin is not a great one, if he has done them a slight harm to escape a great evil, and in case his resistance has not been serious.

Case VII.

Witness Called Before the Court.

Barbaut, having secretly stolen some silver plate from Armand's house, is summoned before justice, being suspected of the theft, and he denies having committed the offense. Two friends of his are called, who have witnessed the theft, and are perfectly aware where is hidden the cause of the offence. One of them runs away to a far off country and does not appear; the other presents himself before the court, but affirms, under oath, that he knows absolutely nothing about it. Consequently Barbaut is discharged, and Armand is forever beyond possibility of recovering his property.

Ques. 1. Should restitution be demanded, in this case, from this liar and perjured witness?

Ques. 2. Is a witness compelled to declare the truth, if he has learned the fact by a secret opportunity, or by a natural secret?

Ques. 3. Is a witness held to denounce a crime which has been kept perfectly secret?

Ans. Question 1. The witness who has remained silent, or maintained that he knew nothing, has committed a grievous sin against the obedience he owed to the judge, and a great perjury; however, in a probable manner, he has not sinned against justice, because he has kept a perfectly negative attitude, and he is not the cause of the damage which happened to Armand. For a witness is compelled to declare the truth only by the judge's order; and consequently, by hiding it, he sins only against *legal* justice; therefore he is not obliged to make restitution.

Ans. Question 2. No, if mutual interest does not compel him; for a witness is not held by himself to obey the judge, when the

knowledge of the truth comes from a natural secret or a confidence; because, putting aside the special reason of the common interest, the judge cannot compel us to violate a principle of natural law. Therefore, in this case, the witness is entitled to say that he knows absolutely nothing about it.

Ans. Question 3. No, is the *more probable* opinion, drawn from the common right, if the witness is quite certain that the crime is known only by himself, because, before declaring a man guilty, two witnesses are necessary. From this the axiom: *Testis unus, testis nullus.*

Case IX.

The Notary.

Darius, a notary, in drawing up a deed of sale, notices that the contracting parties are not declaring the true value of the estate, but a price much inferior, in order to pay less to the register office; in spite of which, he makes up the deed.

Ques. 1. Should Darius make restitution to the State for having so deprived the Treasury of its lawful income?

Ques. 2. *Quid.*, if he has himself suggested to the contracting parties to make such a reduction?

Ans. Question 1. It does not appear that Darius should be blamed; firstly, because by his situation he is not obliged to collect taxes; and next, because the collecting of taxes has no relation with his profession.

Ans. Question 2. The notary Darius must not be charged either with injustice or sin, even if he has suggested to the contracting parties to reduce the price; because, if the contracting parties do not sin, as has been above said regarding taxes, it is at least probable that the notary will not sin by helping them, as he is not held by his profession to oppose their action. For the notary, although a public officer, is not commissioned to look after the taxes, and consequently is not held by his situation, either to collect them or to prevent frauds. Therefore, in regard to taxes, he must be treated as another private person.

Case X.

The Rural Constable.

Barbatien, a rural constable, fulfills his duty quite well. But is it so in all cases? That is the question. Frequently he receives money from offenders, and often is even invited to dine with them, and loaded with presents, he then to show himself very lenient, to the prejudice thereby of the proprietors, who are not indemnified; and of the Treasury, which should have received a fine, and so is deprived of this benefit. Moreover, while preventing others from committing offences, he has committed some himself; and did not disclose the above circumstances of his professional functions, when confessing to the priest.

Ques. 1. Should he indemnify the Treasury for the fines of which it was deprived, by not reporting the offences?

Ques. 2. Should he, when confessing his own offence, have disclosed his professional circumstances?

Ans. Question 1. After the *more probable* opinion, he is not compelled to make restitution for the fines which should have been paid by the offenders if he had prosecuted them; because he is not commissioned to supply the public treasury.

Ans. Question 2. After the probable opinion, he has made a full confession while omitting the above circumstances; because, by stealing, he has not committed a double sin, but only a single one, that is to say, the theft; for he is not compelled to oppose his own offences, but those of other people.

Cases on the Religious State.

Case V.

Religious Vocation.

Florent, a noble and intelligent young man, followed a lucrative profession, and was wisely preparing to marry. In the meanwhile, he is taken very sick, and being threatened by death, struck by fear of the divine judgment, he makes a vow to become a monk if he survives. Being cured, he advises his father of his desire to fulfill his vow. But the father, who is ruined, living in distress, and having placed all his hope on his son, tries to influence him, and to convince him not to follow his idea. "See," says he to his son, "I am old, my condition of fortune is miserable; your elder brother, from want of ability, has so badly managed his business that he is not able to provide either for his own wants or for those of his numerous family, and he needs your help." But Florent, not moved at all by these arguments, and thinking only of his soul's salvation, turns friar, and after his novitiate makes the solemn vows. However, his old father, having exhausted his last resources, is obliged to become book-keeper in a lawyer's office; and his brother, in order to provide for his family, hires himself as servant to a rich man, to the great scandal of his family. Learning this, Florent, who was serving God with much piety and joy, is struck with anxiety, and doubts whether he should give up his vocation, in order to come to the help of his father and brother.

Ques. 1. Is a son allowed to enter a religious Order when abandoning his needy father and sisters?

Ques. 2. Is it permitted to abandon brothers and sisters in need, to enter a convent?

Ques. 3. Under what obligation is Florent?

Ans. Question 1. A son ought not, by principle (*per se*), to enter a religious order, if he leaves his parents in great need. It is different if they are only in slight want. . . .

I say *per se;* because, if the son's salvation is running too great a danger in worldly society, he is not compelled to stay there for the sake of assisting his parents. . . .

Ans. Question 2. It is not allowed to abandon brothers and sisters in great need; but it is permitted to do so for capital reasons. . . .

Ans. Question 3. Florent is not held to come out from a religious Order to assist his brother, as the latter is only in great need. . . . Strictly speaking, he is not compelled to come out from a convent to assist his father; because he should do so only in case of extreme want. . . . He may leave the convent, but he is not strictly compelled to do so.

Case VI.

On the Parents' Consent.

Laurence, a young lady of good morals, educated from her youth in a convent, having attained the age of eighteen, and being requested to return home, beseeches her parents to permit her to stay, and embrace the religious vocation. But they take no notice of her desire. Sorrowful, afflicted, Laurence comes home, and so is compelled to live among this worldly society she despises. But far from weakening, her desire for the religious life increases every day. For three years she does not discontinue to beseech her parents for their consent, with tears and prayers, but in vain. The father was about to give way to his daughter's supplications, but the mother urged him to resistance. At last, the poor girl, seized with a fatal sickness, comes to an extreme state; and before dying, she says to her weeping and despairing mother: "You were not willing that I should be on earth the spouse of Christ; but lo! here is my heavenly Betrothed, who calls me to Him." And after having said this, she gave up her innocent soul.

Ques. 1. Do the parents commit a grievous sin by being opposed to the religious vocation of their children, or by leading them away from it with threats, artfulness, ruse, or earnest requests?

Ques. 2. Have sons, in spite of their parents' authority, a right to enter a religious Order?

Ques. 3. *Quid.* in this case?

Ans. Question 1. Yes, parents sin grievously by leading their children away for no right purpose, by threats, violence, or artfulness. "No excuse can exempt from a mortal sin," says St. Liguori, "parents who lead them away by requests or promises." "We should go by," says St. Alphonsius, "the common opinion of doctors; after which, parents commit a grievous sin." The reason is, that it is to cause a great harm to him who is taken away from religious orders. Therefore, either by violence, artfulness, or requests, there is grievous sin which cannot be excused. Moreover, many theologians charge with a mortal sin, not only parents, but also strangers who lead any one away from the religious vocation; because it is quite contrary to charity. But parents, by leading their sons away from religion, commit two grievous sins, one against charity, and the other against piety; because their duty compels them to take care of the education and spiritual progress of their sons. "However," concludes the holy doctor, "it must not be denied that many parents should be excused from a mortal sin, at least for a time, on account of the ignorance or carelessness so natural in such a case, and which are caused by the deep natural affection they have for their sons."

Ans. Question 2. Yes, by principle; because sons are perfectly free to choose their profession. This reason is valid above all, regarding the religious state. Therefore, when choosing the religious state, sons are not held to wait for the consent of their parents; and there is no advantage even to expect it, because in that parents have not only a lack of experience, but they become adverse to their own interest. However, if the son is able to wait easily and safely for his parent's consent, it is more proper that he should wait a while, in order to secure it. But, if he fears that his parents may be opposed to his religious vocation,

he is free from all blame, if, without their knowledge, he abandons his parents home to consecrate himself to religion.

Ans. Question 3. Laurence's parents have not acted righteously, especially her mother, by opposing so unkindly the vow of their daughter; and without any doubt they have committed a grievous sin. . . . How many such parents, by being unjustly opposed to the vocation of their children, have been punished by their death! "Why weep, impious mother, over the body of thy daughter? Is it not thyself who has killed her?" *

Case VIII.

Vow of Poverty.

Damaris, a professional nun, learning that her father was just deceased, would like to dispose of the share of the inheritance belonging to her, not having renounced it before her profession, and desiring to do so partly for pious use and partly in favor of

* It is interesting to bring together with this illustration, where the ferocity of fanaticism is displayed, this other, that we read in the *Annals of Holy Childhood*, 1877: ". . . The devil, furious, has tried to take two souls away from us, to avenge himself of those he had just been missing.

"In the orphan asylum, we had two children, one four years of age, the other two months old. I had baptized *in extremis*, the mother of those two poor young creatures, who became orphans shortly after. Before dying, and in presence of several witnesses, the mother had given her children away to our nuns. But she had not signed a regular deed, which would, in case of need, prove in court the right of the nuns over those two children.

"It therefore might be feared the children should be taken away from the orphan asylum, if they were claimed by near relatives. The grandmother calls at the above place and insists upon taking back her two grand-children to her home.

"First, this was refused to her.

"She went out greatly excited, and threatening to bring an action against the convent. In the meanwhile, all the nuns were in prayer; they asked God to call back to Him these two souls, rather than to see them thrown back into paganism.

"One month later, a police inspector called in to take some information for an official report against the nuns charged with theft of children, a crime punishable by hard labor.

"They showed the inspector a register of the deceased inmates, legally signed by the civil commissioner, in which he could read that the two young orphans had taken their flight to heaven the same week. God had heard favorably the prayers of our holy nuns, and consequently the devil had to acknowledge that he was vanquished once more!"

her brother. But having asked her superior's permission in order to act in accordance with her vow. "Great God," says the latter, astounded, "what are you asking for, sister? Don't you know that this is not possible, even with a dispensation from the Bishop, or from the Pope, but only with the permission of God Almighty, to whom you have made a solemn profession?"

Ques. 1. What is the effect of the vow of poverty, either simple or solemn?

Ques. 2. Quid of Damaris?

Ans. Question 1. The solemn vow of poverty renders a man incapable of possessing, personally, anything of value. As regards the simple vow, it does not make nuns incapable of possessing under the form of a direct possession; but it does not allow them to use or dispose of anything without the permission of their Superior.

Ans. Question 2. Damaris, by common rights, cannot dispose of her share of inheritance, neither in pious intention nor in the interest of her brother; because her religious profession has rendered her incapable of disposing of her property. And this incapacity cannot be taken off, either by her Superior, or the Bishop, but by the Pope only, as has been said above. It would be different if Damaris were living in some community in France; because, in that country, on account of modern hard times, the Holy See does not acknowledge the solemnity of vows. This is why nuns in France, under the present circumstances, are not called nuns in the strict meaning of the word; however, in the true and proper sense, they are nuns, but not such in the strictest sense, as seems to result from various answers by the 5th Penitentiary.

Case IX.

Vow of Poverty.

Florin, a French monk, had scarcely made his profession, than an omission he had made in the disposition of his property comes to his mind. But he thinks that, with the permission of his Superior, he will be able to make up for this act of carelessness, at least, if he disposes of it according to what may be interpreted from his

intention, especially while following this opinion, by which it is acknowledged that, in France, there are solemn vows. But the Superior, having a contrary opinion, refuses decidedly to give his consent.

Ques. 1. Must we acknowledge the solemn profession of nuns, in France, under the actual circumstances?

Ques. 2. Must we acknowledge it for monks and friars?

Ques. 3. What is to be done in this case?

Ans. Question 1. No; this has been declared very often by the church through the medium of the St. Penitentiary; namely, in answer to the bishop of Limoges, 1820. However, nuns living in Savoy still make a solemn profession, although that country has been annexed to France, because religious affairs are not controlled by civil supervision.

Ans. Question 2. Yes, although in spite of what many have said, without any authority, when foolishly declaring that monks and nuns ought to be assimilated.

In fact: 1. Nothing has been changed by the ecclesiastical power regarding the vows of monks in France; therefore they remain bound by solemn vows, as before the political troubles. For religious affairs do not follow the fluctuations of political revolutions, and remain unalterable until they may be changed by the Apostolic Holy See. Now, no change has been made by the Holy See with regard to the vows of monks, but only concerning those of nuns.

2. It results from a declaration of the Holy Congregation of Bishops and Regulars, that the Benedictine monks of the monastery of Solesmes, in France, make solemn vows. Therefore the new civil legislation of that country does not oppose solemn vows, and, consequently, the same thing may be said regarding other religious Orders making a solemn profession.

Ans. Question 3. It is too late for Florin to make up for his act of carelessness; his profession has rendered him perfectly incapable of possessing anything whatsoever. He therefore should act as if he were dead. Neither with a dispensation of the Superior, nor of the Bishop, can he recover his capacity in this case; and he cannot rely upon the opinion of a few, who pretends that

the vows of Regulars are not solemn in France, because this opinion is not probable, not being based on any positive fact.

Case XII.

Vow of Poverty.

Florine, a nun, earnestly keeping to her vow of poverty, but not losing any opportunity to do acts of charity and mercy, by living too parsimoniously, often deprives herself of food, or other things supplied to her for her own use, in order to give them to the poor, or to young girls educated in the convent. One day, being obliged to go on the road, she makes the whole trip on foot, without stopping at any hotels, and uses the money she had so economized for pious purposes. She hurries up her duties, in order to have some time to spare, when she can work for her nieces educated in the convent. Florine rejoices because she may occupy herself in some pious work without any prejudice to her vow of poverty, and without being obliged always to depend upon her Superior.

Ques. 1. What are we to think of Florine's conscience, generally?

Ques. 2. And in each special case?

Ans. Question 1. Florine's conscience is mistaken. It is false that a nun may, without prejudice to her vows of poverty and obedience, occupy herself so easily with works of charity. But is Florine placed in a vincible or invincible ignorance? This cannot be determined in general. That depends on various circumstances, if she has been well instructed upon her vow of poverty. Why does she not question her confessor, if he is capable; or any other person well skilled in religious affairs? She seems not only to be inclined to acts of charity and mercy, but also desirous of following her own fancies, while she rejoices so much, being able, so she thinks, to act independently of her Superior's authority.

Ans. Question 2. Florine acts contrary to her vow of poverty in each of the following cases: 1. When she distributes to the poor, or to young girls educated in the convent, what she deprives herself of by living parsimoniously; because these things are given

to her for her own use, and not for another purpose. 2. It is the same regarding the money she economized in the course of her trip, reserving it for the same purpose. 3. Neither can she keep what she gains by working quickly, or by attending to her nieces during the time she has to spare. This may be said in general; but there may be some exceptions in some monastic orders, where the vow of poverty is not so strictly interpreted.

Case XV.

On the Property of Monks.

Ques. Has a monk, in France, the right to dispose of his property? And how?

Ans. There is a disposition in civil law interfering with religious obligations. No matter if it acknowledges or not the religious state. The canonical law has its obligations outside of the civil law; for, if the dispositions of the latter are contrary to the canonical law, they are void for the conscience. Thus, monks and religious communities keep their rights. Therefore, civil French law does not suppress either obligations or faculties which are denied from common right. There is nothing to take away, nothing to cut off. Therefore a monk, in France, as elsewhere, should dispose of his properties irrevocably, although he might be considered as proprietor by the law, or as a man having a right to possession. Civil law, to him, is neither prejudicial nor favorable. Then, he cannot be compelled to act as a proprietor.

Case XVIII.

Vow of Obedience.

Ques. What is to be done if doubts arise against the legitimacy of the Superior's orders? Is then the use of probability permitted?

Ans. In doubt, we must side with the Superior. The presumption is on his side, to demand good order and the interests of religion; if it were otherwise, the inferiors might easily express doubts on the opportunity and value of the orders, to the great disadvantage of authority. Thus, in this case, the use of probabilism must be prevented in practice; because, from what has been said, we deny the supposition, in other words, we deny that probability exists against the Superior's orders.

General Treatise on the Sacraments.

CHAPTER I.

Definition, Number and Division of the Sacraments.

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CHAPTER II.

Matter and Form of the Sacraments.

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CHAPTER III.

Minister of the Sacraments.

ART. I. Required conditions for administering the Sacraments; or of the attention, intention, good faith and honesty of the Minister.

ART. II. Duty of the Minister. . . .

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CHAPTER IV.

Person who Receives the Sacraments.

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ART. I. Required conditions in order to receive the sacraments in a valid manner.

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ART. II. Required conditions in order to receive the sacraments in a lawful manner.

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Treatise on Baptism.

CHAPTER I.

Nature, Propriety and Necessity of Baptism.

. . . . . .

CHAPTER II.

Matter and Form of Baptism.

. . . . . .

ART. I. Matters to be avoided, and matters preferred, concerning baptism.

236.—The only valid matter is natural water, or elementary. . . .

237.—Valid matters are: 1, Water from springs, wells, brooks, seas, ponds, swamps, cisterns, lakes; 2, water coming from ice, snow, or melted hail; because it retains its own substance, though its color, savor or smell may be modified accidentally; 3, sulphurous or mineral water, coming from steam, dew, wateriness of walls, of leaves, etc.; 4, troubled water, adulterated, mixed with another substance, as long as water is really the true predominant matter, so that according to custom and the common opinion of men, it may be called water.

2. Invalid matters are: 1, milk, blood, tears, sweat, saliva, pus, urine; 2, wine, oil, beer, thick fat, gravy, etc.; 3d. mud, ink; 4, snow, ice, frost and similar things not melted, because in such a state they are not natural water.

3. Doubtful matters are: 1, very thin gravy, laundry suds, light beer, water coming from melted salt; 2, the liquid which comes out from the vine and other plants.

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ART. II. Formula of baptism.

241.—The formula of baptism is: "I baptize thee in the name of the Father, of the Son, and of the Holy Ghost." . . .

Ques. Is the formula valid, if one says: "I baptize thee: 1, in the name of the Holy Trinity?" or 2, "in the name of Christ?"

Ans. 1. No; at least according to the more probable opinion. . . .

Ans. 2. No; for a still better reason.

CHAPTER III.

Minister of Baptism.

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CHAPTER IV.

On the Subject of Baptism.

. . . . . .

248.—Ques. Can one lawfully baptize the children of infidels?

Ans. 1. Yes, in the following cases: 1, if they have reached the age of reason, and if they consent; even in spite of their parents; 2, if their parents have forsaken the Catholic religion, like heretics; because the Church has a right to repress parents; 3, if such children are on the point of death; because there is an urgent necessity, and no danger to fear; 4, if one of the parents has consented, in spite of the opposition of the other.

2. No, in all other cases; for instance, if both parents are opposed, and if the children are to be under dependence upon their parents. The reason is drawn from the danger of perversion.

CHAPTER V.

Accessory Solemnities of Baptism, God-Fathers, and Ceremonies.

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ART. I. God fathers.

. . . . . .

ART. II. Ceremonies of baptism.

Appendix on Cæsarian operation, to baptize a child who is not yet born.

258.—Should it be performed, and when?

Ans. 1. After the death of the mother, it must be decidedly performed, under *severe penalty;* even if her relatives refuse, or are opposed, in case it can be performed.

It is necessary to use all possible means to retain the warmth in the womb of the deceased mother, until the operation is performed; if not, the child would easily perish before having been baptized.

2. It is necessary to perform the operation, even if the mother is yet alive; if, according to the opinion of expert persons, the child cannot be baptized by any other means. The mother is held *by principle*, speaking in a *speculative manner*, to suffer it, under severe penalty, if it may be done without directly causing her death.

Treatise on Confirmation.

CHAPTER I.

Matter and Form of Confirmation.

ART. I. Matter of confirmation.

261.—The remote matter of confirmation is the chrism, made with olive oil and balm, and blessed by a Bishop.

. . . . . .

262.—Ques. Is balm necessarily required for the sacrament?

Ans. Yes, according to the most probable opinion.

Ques. Should the oil necessarily be made of olives, to render the sacrament valid?

Ans. Yes, because olive oil is the only true kind of oil; thus oil made of any other substances, for instance, of nuts, is not a valid matter; because it is not sold under the simple name of oil only.

ART. II. Form of Confirmation.

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CHAPTER II.

Minister of the Confirmation.

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CHAPTER III.

Person Who Receives Confirmation.

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Treatise on the Eucharist.

PART FIRST.

The Eucharist as a Sacrament.

CHAPTER I.

Nature and Efficacy of the Eucharist.

. . . . . .

271–9.—How long does Christ really remain present within the Eucharist?

Ans. So long as the elements of bread and wine are intact; but He ceases to be therein when the elements are altered so much that, according to the opinion of men, there does not seem to be any more bread and wine left. But, then, after the law established by God, their elements are replaced by the same matter which replaces altered bread and wine.

Ques. How long are sacred elements supposed to remain intact, after one has received the sacrament?

Ans. There is nothing agreed on this point; some say one minute; others, five; and others, seven. But they remain intact longer with a priest, who takes the communion with the two elements and with a larger consecrated wafer, than with a layman, who receives only a small one; although it seems certain that fifteen minutes after the communion, even with a priest, provided he is in good health, the elements are dissolved.

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CHAPTER II.

Matter and Form of the Eucharist.

ART. I. Matter of the Eucharist.

276.— . . . Wheat bread and grape wine are the only matters fit for the Eucharist. . . . .

278. — Ques. Is bread made of barley or rye a valid matter?

Ans. There is controversy. Some affirm it; but others, according to the more common and probable opinion, deny it.

Ques. Is bread made of spelt, or fine wheaten meal, a valid matter?

Ans. There is controversy, also, on this point.

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ART. II. Form of the Sacrament of the Eucharist.

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CHAPTER III.

Minister who Gives the Eucharist.

ART. I. Power of this minister.

. . . . . .

ART. II. Obligation to administer the Eucharist.

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ART. III. Special conditions required to properly administer the holy Eucharist.

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ART. IV. Manner of giving the Eucharist to the sick.

. . . . . .

ART. V. Manner of keeping the holy Eucharist.

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CHAPTER IV.

The Person who Receives the Eucharist.

ART. I. Obligation to receive the Eucharist.

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ART. II. Required dispositions for receiving the Eucharist.

. . . . . .

330.—Ques. Does the absorption of the remains of aliments, sticking to the teeth, break the fast?

Ans. No, if it is involuntary. . . .

There would be controversy, if it were done voluntarily. . . .

331.—Ques. Does a pinch of snuff break the fast?

Ans. No, even if part of it goes into the stomach; because, although such a matter may be nourishing, one does not take it as food. . . .

Ques. Does the smell of tobacco, or similar matters, break the fast?

Ans. No, according to the more common and probable opinion, because smoke is neither an aliment nor a drink. . . .

PART SECOND.

The Eucharist as a Sacrifice.

CHAPTER I.

Nature and Virtue of the Sacrifice of the Mass.

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CHAPTER II.

Application of the Sacrifice of the Mass.

354.—This is the intention with which the priest wishes this Sacrifice to be useful to a determined person.

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CHAPTER III.

Obligations to Celebrate this Sacrifice.

ART. I. Obligation to celebrate it, created by priesthood.

. . . . . .

ART. II. Obligation created by duty.

. . . . . .

ART. III. Obligation created by salary.

. . . . . .

367. . . . A priest may lawfully receive a salary, or alms, for a mass which he is compelled to say, for another person's sake.

. . . . . .

Appendix. For the priests of the Society of Jesus.

378.—A priest belonging to this society must not accept, either for himself or for another, a salary for masses said by him. So also is it for all charges of the sacred ministry. . . .

He may accept money offered liberally, and generously promise in return to say masses; but in such a manner that this promise should not be like a compensation or a manner of discharging himself for the money received; but it is necessary that such money should be given as a simple alm, in such a way that the donor should understand that it cannot be received under any other consideration, and that he is giving it himself as a matter of alms only.

CHAPTER IV.

Time and Place of the Celebration.

ART. I. Time of the celebration.

. . . . . .

ART. II. Place of the celebration.

386.—It is generally allowed to celebrate a mass only in a dedicated church, or at least a blessed one.

CHAPTER V.

Method of the Celebration.

ART. I. Required conditions for celebrating mass.

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ART. II. Rubrics.

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Treatise on the Sacrament of Penance.

PART FIRST.

On the Essence of the Sacrament of Penance; its Nature, Matter and Form.

CHAPTER I.

Nature of Penance.

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CHAPTER II.

Matter of the Sacrament of Penance.

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CHAPTER III.

Form of the Sacrament of Penance.

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PART SECOND.

The Person Who Receives the Sacrament of Penance; or on the Penitent's Duties.

CHAPTER I.

Contrition.

ART. I. Contrition, properly so called.

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ART. II. Pu.pose.

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CHAPTER II.

On Confession.

ART. I. Necessity of Confession.

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ART. II. Quality of Confession.

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ART. III. Repetition of Confession.

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ART. I. Assessment of Penance.

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ART. II. Accomplishment of Penance.

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PART THIRD.

Minister of Penance.

CHAPTER I.

Power of the Minister.

ART. I. Approbation.

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ART. II. Jurisdiction.

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ART. III. Reserved Cases.

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Appendix First: On the absolving of an accomplice to a a shameful sin.

584. — No confessor can absolve his accomplice in a shameful sin; and whoever has the presumption to do so, incurs, by the fact itself, Papal excommunication.

585. — Ques. What is to be understood under the name of a shameful sin?

Ans. All grievous sins against the sixth precept of the Decalogue, though the shameful act may not have been consummated; even a single shameful touching . . .

Ques. Does one understand by accomplice, not only women, but even men?

Ans. Yes, because the text of the Bull is taken entirely in general. It is said therein: "That whosoever dares to receive the sacramental confession of an accomplice, against the sixth precept of the Decalogue, for a shameful sin." The application of the statute is not confined to the feminine sex only.

586.—Ques. Can a priest absolve his accomplice when in danger of death, if another priest cannot be called in, or cannot come at once without causing dishonor and scandal?

Ans. Yes, in a lawful and valid manner. However a guilty priest is held to prevent such dangers of dishonor and scandal, if he can help it; for instance, by retiring, under some pretext. Otherwise, he can not escape the established penalties, although his absolution is valid.

Ques. Is a priest entitled to absolve his accomplice, when in danger of death, and refusing to confess to another priest?

Ans. Yes, as in the former case, if the penitent has been prepared for it in some other way, so that he should not perish, or at least that his eternal salvation should not be compromised.

587. —Ques. Can a priest absolve his accomplice for other sins which do not concern his own offence, after the penitent has been absolved by another confessor?

Ans. Yes; because he is only deprived of the jurisdiction on this penitent for what concerns the sin in which he had a part; therefore, when the latter sin has been redeemed by the absolution allowed to be given by another confessor, the prohibition ceases, and jurisdiction is no longer taken away from him. . . .

Appendix II. —Solicitation to sin in course of the confession.

It never could be regretted enough, that within the sheep-house of Christ there are occasionally unscrupulous wolves, who, established as being appointed guardians of Israel's home, degrade and break into it most cruelly.

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593.—Ques. Should a priest be prosecuted because while hearing the confession of a lady, he solicits her to sin?

Ans. Yes, if the solicitation takes place in the confessional, or where the confession is made. No, if it is outside of that place, and under another pretence than confession.

595.—Ques. Should one prosecute a priest, who, having learned through confession the weakness of a woman, solicits her to sin at her home?

Ans. Yes, if he has so solicited her as a person of whom he has learned through confession the character and frailty, and if he impresses the fact upon her mind, either by a word or otherwise.

Ques. Must we always believe women who accuse a priest of having solicited them to sin?

Ans. No; because it has often been heard of women; who calumniate innocent clerks through jealousy, hate, zeal, or some other perverse motive. . . .

When superiors have acquired the certainty of such a crime, they should proceed with prudence, and punish the guilty priest according to the extent of his sin, without placing on the same level a fault already forgotten, or caused by human frailty, with a fault recently committed, and which is his customary sin.

597.—Ques. What are the penalties pronounced against those who solicit to sin?

Ans. According to the Bull of Gregory XV., they are: Suspension from the exercise of the sacred ministry; deprivation of any benefits, dignities and pensions whatever; and a perpetual incapacity to obtain such privileges; besides, regarding priests belonging to religious Orders, the deprivation of all active and passive voices.

CHAPTER II.

Duty of the Minister During and After the Confession.

ART. I. Duty of the minister in course of the Confession.

Parag. 1. Confessor's part.

He should practice the quadruple part of father, doctor, physician and judge.

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ART. II. Duty of the minister after confession.

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663.—Ques. Can a confessor order a penance to an accomplice (with the permission of the penitent); or must he leave the care of so doing to another confessor?

Ans. Yes, because the accomplice has not acquired, by the confession of the other accomplice, any right to sacramental secret, for this secret was instituted in favor of penitents only; consequently the right to the secret is acquired only by the one who gives it up confidentially.

But, ordinarily, it is not proper that the confessor should take such a liberty.

Treatise on Extreme Unction.

CHAPTER I.

Nature and Effects of Extreme Unction.

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CHAPTER II.

Matter and Form of Extreme Unction.

ART. I. Matter.

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ART. II. Form.

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CHAPTER III.

Minister of Extreme Unction.

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CHAPTER IV.

Person who Receives Extreme Unction.

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Treatise on Order.

CHAPTER I.

Nature and Division of Order.

. . . . . .

CHAPTER II.

Matter and Form of Order.

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CHAPTER III.

Minister of the Sacrament of Order.

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CHAPTER IV.

Person who Receives the Sacrament of Order.

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Cases of Conscience on Sacraments in General.

These cases are of no interest for a layman; and treat of trifling matters. In order to give an idea of the childish subjects, we will give a few examples:

Case III.

Change of Matter.

Trophime, a midwife, hearing for the first time Sabin, a young priest, singing the mass, exclaims enthusiastically of his beautiful voice: "Very good, indeed! How much he has improved! I am not surprised. I baptized him myself, and I mixed some milk with the water."

Ques. What are we to think of Sabin's baptism?

Ans. In order to know if it is valid, it will be necessary to ask Trophime if the milk was in less, equal, or superior proportion to the water. In the first case, the baptism is valid; in the second, it is not; therefore Sabin should receive a new baptism, and sacred orders.

Case IV.

"Lapsus Linguæ."

Sidon, a priest, instead of "*Hoc est enim corpus meum,*" says, when consecrating: "*Hoc est corpus meus,*" or "*Corpus meu.*"

Ques. Is the consecration valid? etc., etc.

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Case VI.

Interruption.

Cornelius, a priest, baptizing a child, said: "I baptize thee," —then he says to some children who are playing: "Silence! bad

boys, stupid children!"—and he adds: "In the name of the Father, of the Son, and of the Holy—at this moment he sneezes and coughs—Ghost."

Ques. Is this baptism valid? etc., etc.

. . . . . .

The following may be a more grievous fact, from a social point of view:

Case XVIII.

The Person who Receives the Sacrament.

Florian, a priest, requested to call on Titius, a dying man, hears his confession, and administers to him the holy Eucharist, which he freely accepts. But when he tries to administer Extreme Unction, Titius refuses to receive it, declaring that he is not in danger of death. But the priest, noticing that Titius is losing all consciousness, begins to anoint him with the holy oil, and administers the sacrament till the end, although the dying man, opening his eyes and seeing what is being done upon him, shows his ill will by shaking his head.

Ques. Has Florian acted validly and lawfully?

Ans. Yes, he has acted validly, because the consent of Titius was not lacking.

And lawfully, because every time it is possible to administer the sacraments it must be done, when there is necessity. . . .

Therefore Florian should not only be absolved, but praised for it.

Cases of Conscience on Baptism.

Case I.

The Matter of Baptism.

Ques. Is baptism valid when a woman weeps upon the head of the child, while saying the sacramental words?

Ans. No; because tears are not natural water.

Case VI.

Minister of Baptism.

Ameline, a Catholic woman, married to a Protestant, desires to take her new-born child to the curate to have it baptized; but her husband commands her to take the child to a priest of his creed. The pious mother laments and weeps, not being able to satisfy her heart's desire. But an idea comes to her mind, as a remedy to this situation; she herself baptizes her child at home, before she carries it to the minister.

Ques. What must we think of Ameline?

Ans. Ameline has acted badly; for she was the cause of the child being baptized twice. And there is less grievance in having a child baptized by a heretic, than in having it baptized twice. . .

Case IX.

A Child Baptized Four Times.

Honorine, a midwife, requested to call for a delivery, and fearing the fœtus would perish with the mother, who is in danger of death, baptizes it with a surgical instrument in its mother's womb; later on, an arm of the child showing out, and the danger being thereby increased, she baptizes it upon this member. Then, not feeling satisfied about the validity of these baptisms, and the child being nearly dead at his birth, she baptizes him once more. Finally, the priest arrives, and doubting the validity of these ceremonies, performs the sacrament for the fourth time, under conditions.

Case X.

Baptism of the Children of Heretics.

1. The priest Faustus receives for baptism a child born from Protestant parents, and christens it solemnly with the holy water, but under condition that the god-father be a Catholic, although he well knows that his parents will educate their son in heresy.

2. Another time, a Jewish married couple who had come to reside in his parish, with intention to stay a short time on account of their business, leave in trust of the servant of the house where they had stopped their two children, a son seven years of age, and and a daughter three years old. One day the priest learned, through this servant, that the Jewish young girl is seriously sick and in danger of death, and that her brother, whom she had initiated into the Catholic religion, had eagerly asked, in many instances, to be baptized. What should he do then? The good priest calls at the indicated house during the absence of the parents, and baptizes secretly the two Jewish children. The little girl recovered after a short time, and the parents, having settled their business, went to another country, in consequence of which the priest is greatly anxious regarding the fate of the young baptized children.

Ques. 1. May children of heretics be baptized by a Catholic, either with the consent of or unknown to their parents?

Ques. 2. May the children of infidels be baptized unknown to their parents, or in spite of them? *Quid.* If the mother consents, when the father is opposed? or if the grandfather consents, while the parents refuse?

Ques. 3. What should be done with a child, if the use of reason is certain? and what is to be done if it is doubtful?

Ques. 4. What must we think of Priest Faustus' behavior?

Ans. Question 1. Children of heretics may be baptized with the consent of their parents; or else, parents who admit baptism in their creed, would have their children baptized by a heretical minister. But it is not allowed to baptize the children of heretics without the knowledge of their parents, except in case of necessity, when the parents are going to have their children baptized according to their creed, so that they should not be obliged to be baptized again.

Ans. to Question 2. It is not allowed to baptize the children of infidels in spite of parents, except in case of necessity, or unless the children, enjoying their full reason, request themselves to be baptized. The excuse is found in the danger they are running of losing their salvation.

If one of the parents is in favor of baptism and the other against it, the priest should side with the one who is favorable to the baptism and the salvation of the child, providing the latter is to be afterwards educated in the true religion. It would be the same if the father, being deceased, the grandfather was in favor of the baptism and the mother against it.

Ans. to Question 3. In case the use of reason is certain with an infidel's child, if he seems to be sufficiently educated and asks to be baptized, and if he is not running the danger of perversion, even in spite of parents. If the use of reason is doubtful, the child having reached the age of seven, it is commonly said that the priest must presume the use of reason, because it must be judged from what commonly happens. If the child has not reached the age of seven, there is controversy. But, according to St. Liguori, it is better to wait until it may be ascertained regarding the perfect use of reason.

Ans. to Question 4. Faustus has acted well by baptizing the child presented to him by heretical parents; for if it had not been redeemed by him, and had been baptized by a Protestant minister, it would not have secured the advantage of being sanctified by the Catholic doctrine.

2. Faustus might and should baptize the Jewish young girl in danger of death. If she has recovered, the good priest must not be charged with impudence because he has given help to her poor little soul in a great danger. And there is no occasion to accuse him for the seven-year-old boy enjoying his full reason, well acquainted with religion, and asking the sacrament of redemption. For, if led away by his parents, he is later on exposed to perversion, there is, however, good hope to presume that, with the grace of baptism, he will remember so great a blessing, and will so obtain eternal salvation.

Cases of Conscience on Confirmation.

(They are of no interest.)

Cases of Conscience on the Eucharist.

Case I.

Substance With Which the First Consideration Should be Made.

The priest Vitalis, living in a country where wheat does not grow and is not easy to be had, uses for the sacrament of the Eucharist consecrated wafers, made sometimes of spelt, of rye or of barley, and at other times of all these substances mixed together.

Ques. 1. What is the substance with which the first consecration should be made?

Ques. 2. Is Vitalis' consecration valid?

Ans. to Question 1. The substance with which wafers should be consecrated is wheaten bread; in other words, such bread as is generally considered as bread, properly so called.

Ans. to Question 2. Vitalis' consecration is not valid with barley bread; because it is not bread properly so called. This substance, being doubtful, should therefore be prohibited in this case. For the same reason, also, spelt or meal. However, in some places, a sort of wheat is supplied under the name of spelt, and of it is made bread, properly so called.

The mixture made by Vitalis is also doubtful, and even if the proportion of barley is larger, the substance is not valid.

Case VIII.

Ministry of the Eucharist.

Nicaon, a priest, having a sore hand, and not being able to use

his fore-finger at the communion, takes and offers the consecrated wafer between the thumb and middle-finger.

Ques. What are we to think of Nicaon?

Ans. It is not allowed to give the Eucharist with other fingers than the thumb and fore-finger. . . . And consequently, Nicaon has sinned grievously, in principle.

Case XXI.

The Holy Viaticum.

The priest Lucain, learning that Romarin, a nobleman, is severely sick, calls in haste upon him. First, he is refused admission by the patient's family. After his earnest entreaties, he is permitted to enter the chamber on condition that he shall speak neither of death nor of the sacraments, in order not to frighten the patient. In spite of this, the priest endeavors to prepare the sick man, and manages it so cleverly that he soon receives his confession. But, later on, when it is a question to administer to him the Holy Viaticum, the priest finds the wife very sick also; for that reason he is sent away as an unlucky visitor, and it so happens that Romarin dies the same night without having received the Viaticum.

Ques. Is one obliged to give and receive the Holy Viaticum?

Ans. Yes; the two obligations are grave, by themselves, according to all authorities; for: 1, The pastor of souls is held by duty to administer the Eucharist to his parishioners during their life, every time they request it reasonably, and with more reason when there is danger of death; because it is his duty to supply all things necessary or helpful to salvation; 2, the faithful, after the recommendation of Christ and the Church, should often receive communion in the course of their life, and with more reason are they obliged to do so when in danger of death, in order to be strengthened against spiritual enemies by such divine help.

Cases of Conscience on the Mass.

Case XII.

Change of Application.

Titien, a parson, has received from a noble and very pious lady a piece of gold, to say, on Saturday, a mass in her behalf at the Virgin's altar. But the same day, he has to say a mass to the intention of a deceased man. What should he do? He asks Tiburce, a priest, his friend: "Will you celebrate a complimentary mass to my intention next Saturday; and on Monday, in return, I will celebrate one to your intention?" Tiburce accepts, and by so doing the parson has complied with both of his obligations, and has been able to keep the piece of gold.

Ques. What are we to think of Titien?

Ans. Titien has acted lawfully, according to the most probable opinion.

Cases of Conscience on Confession.

Case XI.

Circumstances of Sins.

Young Paschasius has committed the shameful sin with his own sister, his first cousin, and his brother's wife. Having returned to better feelings, he goes and throws himself at his confessor's feet, and, with the greatest repentance, declares he has acted shamefully with three women of his relatives.

Ques. Has Paschasius so made a plenary confession; or should he have named the degrees and species of relationship?

Ans. 1. Paschasius has not made a plenary confession, as he has omitted to state the circumstance of adultery with his brother's wife. He should have at least added that one of those three ladies was a relation of his by marriage.

2. He should have even named the incest with his own sister; that is to say, with a relative of the first degree in collateral line. The reason is, that the respect which is due to sisters and brothers is of another kind than that due to other collateral relatives. This results from the fact that the Church never grants a dispensation for marriage with that degree of relationship. It is the common opinion of Lugo and Lacroix. But St. Liguori professes a contrary opinion as probable; because such an union (*talis copula*) is not forbidden by natural right; as follows, says he, from the example given by Adam's children. But it may be replied to this, that this union is forbidden, at least, by natural right in the largest sense, and more yet than polygamy, the only exception being when compelled by necessity.

3. The more probable opinion is, that Paschasius could not very well name the degree of relationship as regards his cousin, because other degrees produce but an aggravated circumstance; St.

Liguori and others, according to the more common opinion; on the contrary, Concina, etc. And he was not compelled to state the degree of relationship of his sister-in-law; because, with the exception of the first degree, — in almost direct line in other words, — between father-in-law and daughter-in-law, and between son-in-law and mother-in law, the more probable opinion is, that the sin of lust does not change of nature according to the various degrees, and it is not necessary to make a distinction between relationship by blood and relationship by marriage. St. Liguori proves that this is the common opinion of theologians.

Case XIII.

Denunciation of the Accomplice.

I. Bertoldus has committed the horrible crime of incest on his own sister, who is well-known by the priest of the parish, whose nephew she is shortly to marry. Paschal-time is near, and the unfortunate man can confess only to his pastor. He hesitates a long time whether he should and may declare the incest committed on his own sister, dishonoring her in the priest's eyes. He was ready to omit his sin; but, while thinking over it, he hits upon a scheme to get out of his trouble, and so makes the following confession: "I once committed incest on a relative of mine."

II. Œgidius, noticing that his sister is pregnant from Caius, her lover, becomes furious, strikes her severely, and so causes her to have a miscarriage. Repenting of his action, he confesses that he has severely struck his sister; but he neither states that she was pregnant, nor that she had a miscarriage, in order not to declare this crime to his confessor, by whom he is well known, together with all his family.

Ques. 1. Should one confess a sin that one cannot tell without naming the accomplice?

Ques. 2. Must one declare the sin to the confessor who knows the accomplice, if able to secure another confessor?

Ques. 3. Is there obligation to declare a mortal sin of which one cannot accuse one's self without dishonoring another party who was the object or occasion of such a sin?

Ques. 4. What should be done in these two cases?

Ans. Question 1. Yes, it is the more common and probable opinion, as there is no legitimate reason which excuses us from confessing a sin. For the prejudice which results from the denunciation of an accomplice is inherent to the confession itself. Otherwise, in many places, where all the faithful are known by the parsons and deacons, confession would not be in force; as parents, sons, husbands and wives would be dispensed in many instances from declaring their sins, which would be absurd. However, quite a number of other theologians deny it, after a probable opinion.

Ans. to Question 2. No, if one is able to secure easily another priest; but one finds out easily some motives for dispensation. Moreover, putting aside these motives for dispensation, the sin would not generally be very great if one kept to the usual confessor.

Ans. to Question 3. Yes, this is what follows from the answer to the first question, as the reason drawn from the *integrity* of the confession does not dispense any one from denouncing the person who is not an accomplice as well as he who is such, when the integrity cannot otherwise be respected.

Ans. to Question 4. In the first case, Bertoldus is compelled to confess that he has committed incest with a relative of the first degree in collateral line, or more direct, on his own sister, which results from the answer to the first question. However, according to St. Liguori, it would be satisfactory to simply state: "I have sinned with a relative of mine." This opinion is not mine at all; but while it is that of so great a doctor, I must not oppose it.

In the second case, how does it seem to you about Œgidius? This is a delicate matter. On one side, it does not seem likely that he was able to declare his sin without stating the above circumstances. However, according to many, he might confess these two sins separately; that is, of having first struck his sister, and having caused a woman to have a miscarriage. Do not say he would omit thus the special circumstance of relationship concerning the fœtus' murder; as, most probably, ill-treatment of relatives does not constitute a new kind of sin, unless it is a question of parents in direct line, to first and second degrees. Now the mur-

dered child, the sister's son, is a relative to the third degree in collateral line; therefore, with regard to him, Œgedius did not violate, in any special manner, the virtue of piety. Consequently if instead of his sister, Œgedius had struck his widowed mother, criminally pregnant, he could not find any means to get out of the difficulties, and he then should be compelled to declare all the above-named circumstances.

Case XIV.

Inquiries About the Accomplice's Name.*

I. Thersile calls on Rufin, her confessor, and declares she has committed the grievous sin of lust with a man. "Is he your relative?" asks Rufin. "Yes, by Adam." "Is he your neighbor?" "More or less." "Who is he, then? What is his name?" "He is called by his Christian name." "Impudent woman! I cannot give you absolution, as I am not able to know the opportunity and extent of the sin you have committed."

II. Jules, a man of importance in his county, comes to confess to the same Rufin, and charges himself with having committed the shameful sin with a woman several times. But Rufin, remembering that Jules had formerly led a bad life with his servant, whom he was obliged to send away, strongly suspects him to have hired another, and so to have a new opportunity near at hand. He asks him: "Is she a slave?" "She is free." "Is she a servant?" "She is a servant of God, Eve's daughter." "Does she live in your house?" "But, Father, that has nothing to do with confession." The confessor, not being able to get more out of him, absolves him, and sends him away.

Case XXI.

Absolution of a Dying Heretic.

Oliver, the priest, travelling in heretical countries, stops at a hotel, and there meets with a heretic, who is unconscious and near to death. Oliver is unaware whether he is a heretic by practice

* I quote these two cases only, as a matter of curiosity; they throw a good light on the little comedies of the confessional.

(*materialis*), or by principle (*formalis*), and whether or not he has the use of reason. What should be done? At first he is in great uncertainty; but as there is danger in waiting longer, soon presuming and accepting his act of contrition, and his desire to confess, he absolves him under conditions.

Ques. Does he act properly?

Ans. Oliver must be praised for having thought of the heretic's salvation, as much as he could. He had not assurance that he was a heretic in principle, and therefore could entertain hope, although very slight, of giving him a valid absolution.

Case XXII.

Absolution of a Dying Heretic.

Cesarin, a heretic, but a man of good morals and who seemed to be only in material error, is taken severely sick, and is in danger of death, without having lost the use of his reason. Sylvien, the parson of the parish, calls on him immediately, to prepare him for eternal salvation, and speaks to him in the following manner: "My friend, I guess you adhere to the Lutheran religion merely because you consider it the true religion? Would you not forsake it immediately, if you thought it bad? Do you not confess to God that you have sinned? and will you confess it to a man who is able to give you absolution? Would you not confess to me, if you knew it to be your duty to do so?" To each question, the patient answers "Yes;" and the priest then says to him: "If this confession is sufficient, I will give you absolution," etc., etc.

Ques. 1. May absolution be given to a practical heretic, he being quite conscious, and refusing in good faith to embrace the Catholic religion?

Ques. 2. Has the confessor acted properly, in this case?

Ans. Question 1. Theologians deny it generally. . . . But Lacroix, Reuter and others affirm it, in case of extreme necessity, because the conditions absolutely required for the sacrament of penance are to be found here implicitly, by some means. In fact, this heretic may very well repent of his sins and desire

implicitly the confession; for instance, if he declares to the priest who questions him, that he would like to confess were he a believer in the Catholic religion as the true religion. This opinion should be adopted in practice, so it seems. . . . So it happens often in some parts of Switzerland and Germany, where such heretics are absolved just before their death.

Ans. Question 2. Sylvien must not be blamed for having given absolution to a heretic (in practice) who was perfectly conscious. He has acted with prudence, if, in this extremity, he had no time to instruct and convince the heretic. For, if he had said to him that his religion was false, he would have run the risk of spoiling his good faith, without any chance of bringing him to the true religion.

Objection: To secure a valid absolution, an act of faith is required: now, from a heretic, one cannot expect a supernatural act of faith; therefore absolution should not be given to a heretic.

Ans. An act of faith cannot be expected from a heretic by principle, but it may be from a heretic by practice. The reason is, that a heretic by practice belongs to the soul of the Church, although he is separated from its body;* he therefore may perform an act of hope, of charity, and of contrition, based on this act of faith.

*This terrible doctrine, which set on fire so many stakes in the good old time, is exposed by *Marotte* to the young children in the following terms:

"Ques. Are heretics subject to the laws of the Church?"

"Ans. Heretics, although unfaithful to the Church, remain subject to her authority, and consequently are compelled to observe her laws, unless exempted from so doing." (*Petit Catechism*).

Case II.

Cause of Reserve.

Laurien, travelling outside his diocese, confesses to the priest Justin a sin of incest committed on his cousin, of the second degree. Immediately Justin warns him that this sin is a reserved one, and that he cannot give him absolution for reserved sins. Laurien answers, as a man who is not ignorant regarding religious affairs, that such a sin is not reserved in his diocese, as he knows well. "But," says the priest, "it is reserved here where you make your confession." "I don't care," says the penitent, "I have not sinned here, but elsewhere; I therefore have not committed a reserved sin." "Go, my friend, and confess where you have sinned; I cannot give you absolution."

. . . . . .

Case XIV.

Absolution of an Accomplice.

I. Titien, the priest, taking advantage of an opportunity to satisfy his passion, has committed with Anna a grievous sin against the sixth commandment. Soon afterwards, the two guilty ones repent of their fault. As no other priest is near, Titien goes to another town to confess. But Anna, retained at home by sickness, cannot go out to find another priest. Overwhelmed with sadness, she earnestly requests Titien to hear her confession. The latter at first hesitates, as on one hand he is prevented by the law of the church, which forbids to give absolution to an accomplice; on the other hand, he desires to help this unfortunate woman, who runs the risk of having no confessor for a long time. Presently, moved with compassion, he hears Anna's confession, and gives her abso-

lution, feeling convinced that he is not held by the inhibition of the church in this difficult case.

II. Calliste, a priest, commits the shameful sin with Julia; he receives her confession as accomplice, but refuses to give her absolution. Later on, he does not know whether he has incurred Papal excommunication.

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Case XV.

Absolution of an Accomplice.

Hermodore, a priest, gives absolution to Rosalie, his accomplice, who is at the point of death, u ged by the following reasons: 1, he is entitled to give absolution for reserved sins; 2, at the point of death all reservations cease; 3, there is no other priest except a young vicar, who surely would be much shocked; or a new priest not yet approved, and who would excite the astonishment of the people were he to hear Rosalie's confession.

. . . . . .

Case XVII.

Absolution of an Accomplice.

Dydime, a priest, dressed in lay clothes, meets Eulalie during the night, with whom he does not hesitate to commit the shameful sin. Next morning, Eulalie calls on Dydime, and confesses the sin that she committed the previous night with a man entirely unknown to her. From what she adds, Dydime understands clearly that the woman is his accomplice. What shall the unfortunate man do? What a trial for him! . . . If the penitent woman knew it, she would cry out in her sorrow: "You are the man!" . . . But she is unaware of the fact, and Dydime dares not tell her. Besides he has no pretext to refuse her absolution. What shall he do then? In his uncertainty he gives her absolution, and later on inquires whether the absolution is valid or not. . . .

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Case XVII.

Absolution of an Accomplice.

I. Lelius, a parson, while hearing a confession, learns from a woman that she has committed the shameful sin with a priest. He does not know what to think, as he recollects having sinned one night recently with a woman with a voice almost like hers. However, he dares not tell her of his doubt, and absolves his accomplice.

II. Narcisse, a simple priest, hears the confession of Leonie, on whom he had tried to satisfy his passion. She had resisted externally, but consented inwardly. A few days later she asks him to hear her confession, and declares her sin committed internally. Narcisse does not know whether he should absolve her, but finally grants her the blessing of absolution.

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1. If a priest has taken advantage of a woman drunk or asleep, to satisfy his passion, he does not lose by it the right to absolve her, because she cannot be considered as his accomplice.

2. If a priest has persuaded and led a woman to believe that she does not sin by allowing him shameful contact; and the woman, thus deceived, lets him do what he pleases, she is not his accomplice, and the priest may absolve her for her other sins.

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Case XVIII.

Absolution of an Accomplice.

I. Romain, a priest, having committed the shameful sin with Rutilie, and knowing that he cannot absolve her, . . . sends her to another priest.

II. Julie, who had had shameful relations with her parson, was taken severely sick. She knew her accomplice could not absolve her, and might easily have requested the visit of another priest. But the unfortunate woman, fearing to disclose her shame to another priest, uses the following stratagem: She requests hastily her parson to bring her the holy viaticum, as she had received absolution from another priest. The parson, not suspecting any-

thing, arrives. Then Julie confesses to him before the communion, and is absolved in good faith by him, as being at the point of death.

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Case XIX.

Absolution of an Accomplice.

I. Geline, a courtesan, who had committed shameful sins with the priest Valere, despising her infamous life from the bottom of his heart, comes back sincerely to a better course. She makes an exact confession of her whole life to Albert; but, by an innocent act of forgetfulness, she omits to state the sin committed with Valere. Later on, she confesses to her accomplice, declares this sin to him, and receives absolution.

II. Therese was almost dead. Near her death-bed is Flavien, a suspended priest, who is disposed to absolve her. But Albin, who was the accomplice of Therese in her shameful sin, takes the place, receives the confession of the dying woman, and absolves her.

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Case XX.

Absolution of an Accomplice.

Lucienne, accomplice of the priest Romain in libidinous sins, threatened with death, calls for a priest, and loses the use of speech. Romain arrives, questions her, and she answers him by gestures. But it happens that, after a short time, Lucienne gets up again and is better; her apoplexy was a feebleness only. Romain does not know whether he should terminate the confession. Finally, he gives the absolution.

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Case XXI.

Absolution of an Accomplice.

Marcel, the priest, has used obscene words, and the most shameful touching with Aurelus, his boy-friend. While hearing confessions of penitents Aurelus arrives, and confesses the sins committed

with Marcel not yet confessed. Marcel doubts at first whether he should absolve him; but he soon throws away all scruples, because reserved cases do not include either words or touchings alone, nor sins committed with a man. Besides, says he, in absence of all jurisdiction and before a common error, the Church will make up for it.

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Case XXII.

Absolution of an Accomplice.

Liborius, a candidate for the priesthood, before taking Orders, has committed a grievous sin against chastity with young Flavie. . . . Having become a priest, Flavie calls on him, declares to him that she has hidden in her previous confessions the sin she had committed with him, and asks him to receive her confession.

Liborius hesitates at first; then he decides to hear and absolve his accomplice.

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Case XXIII.

Absolution of an Accomplice.

I. Bruno, a priest, having committed a shameful sin with Martha, has recourse to the Bishop, hiding his name, and obtains the privilege to hear and absolve his accomplice.

II. Elegius, another priest, has unfortunately committed a grievous sin against the sixth commandment; and, more unfortunately, absolves his accomplice, and by so doing incurs Papal excommunication.

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Case XXIV.

Shameful Solicitations.

Viliane, a woman of light morals, has committed several shameful acts with her confessor, by whom she had been solicited, as much during confession as outside it. She has hidden these sacrileges in several confessions. Finally . . .

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Case XXV.

Shameful Solicitations.

Cornelie declares in confession, to parson Sulpice, while weeping, that she has committed the shameful crime with Evrald, her confessor, whom she was pursuing with her guilty love. Sulpice questions her. . . .

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Case XXVI.

Shameful Solicitations.

Rufine, solicited to sin by Sylvain, her confessor, has yielded to him. But, during fifteen years, she has not dared to declare her crime in confession. Finally, she states it to a new confessor, who requests her to name her accomplice. She refuses. 1. . . .

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Case XXVIII.

Shameful Solicitations.

I. Brixius, the priest, in course of a confession, has solicited from Rutilie some slight immoralities. Rutilie calls on another confessor, and declares to him the facts. The latter, having heard the confession, compels her to name the seducer; and, on her refusal, sends her away without absolution, until she denounces him.

III. Sigolena, tells confidentially to Valfride, that she was excited to immoral actions by her confessor Paulin, during confession. Valfride, anxious, tells the whole affair to her confessor; when the latter compels her to denounce Paulin, in spite of the promised secrecy, threatening her with a refusal of absolution.

III. Priest Ripasius, solicited by Bertha to receive her confession on the morrow, excites her immediately to sin. She calls on another confessor, who compels her to denounce Ripasius.

Ques. 1. Should we denounce a confessor who urges us to slightly immoral acts?

Ques. 2. Should a penitent make this denunciation; not only the one who has been excited to debauchery, but also the one who hears of it?

Ques. 3. What is to be done, if he had learned the excitation to debauchery in confidence?

Ans. Question 1. No; at least in the most probable manner. The reason is: that to denounce a seducer, it is required that the act of excitation be a grievous sin, so that one should think he has sinned gravely in this case. For Benedict calls this crime of excitation a sacrilegious trick, because it certainly denotes a grave sin.

Besides, an act contrary to chastity in itself, does not become grave because it took place during confession, or on the occasion of confession; as otherwise, all venial sins, in matter of veracity, humility, patience, etc., would become grave in this sacrament, which nobody affirms. And it should not be objected that a slight fault should become grave on account of the respect due to this sacrament; as otherwise, all sins would become grave in confession, for want of respect to this sacrament; which is false. Moreover, the outrage does not exist so far, since this sacrament is given with a bad intention; therefore, if the action is but slightly bad, the outrage made to the sacrament would be only slight. (*St. Liguori.*)

Ans. Question 2. Yes; the reason is, it matters little that it might be a question of the person excited to debauchery, or of another acquainted with the whole affair; for the object itself of the law remains adequate, viz., that the seducer be punished. In fact, this case is a rare one; because, most of the time, the excitation is known to the excited penitent only.

Ans. Question 3. A person who knows of the excitation confidentially, is nevertheless held to make denunciation of it. The reason is, that nobody is held to keep a secret, even promised with an oath, when this secret brings a common prejudice. However, it is right to except a case when confidence is reposed in order simply to ask advice; for the divulgence of the secret would be contrary to the relations of men, and even to the general welfare, which intervenes when asking advice.

Cases on the Duty of Confessors.

Case VI.

Occasion of Sinning.

Goodman, a confessor, absolves, without any objection, the following penitents: 1, a stranger who is still keeping his concubine at his home; 2, a merchant who goes every year to the fair of Beaucaire, and sins each time with the same woman; 2, a lady who has ceased to sin for a year, but however meets her lover from time to time without sinning, writes to him honest letters, and keeps his portrait at her house.

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Case VII.

Occasion of Sinning.

Young Julienne sinned often with Caius, her father's servant, and a family relative. She confesses with great repentance; and she is given absolution once, twice, three times. However, she falls again; and throwing herself at her confessor's feet, in weeping, she avows her fault. The confessor hesitates; but, moved with compassion, he absolves Julienne for the fourth time, and even many others.

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Case VIII.

Occasion of Sinning.

I. Lampridius has sinned once or twice with his servant; he confesses it three months later, affirming that he repents from the bottom of his heart, and that he will try all means to avoid a repetition; but he cannot discharge his servant, who is very useful to

him. After having considered all these reasons, the confessor absolves him.

II. Priest Radulphey obstinately declines to send away his servant, with whom he has used too great familiarities many times, and even very often: 1, because, if he were to do so, what had been reported would be confirmed; 2, because, with another servant, he would, perhaps, be exposed to a greater danger; 3, because, in the spiritual exercises he followed lately, he was advised to act so by his confessor.

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Case IX.

Occasion of Sinning.

I. Ludimille, for the last ten years, is in the service of Ulderic, a bachelor of doubtful morals. The public opinion is that they are living in concubinage. She calls on a missionary, who was conducting some revivals in her town. She denies having had shameful intercourse with her master, and asks to be granted the sacraments.

II. Young Olympia, having the intention of marrying Baldius, though she notices that her presence and his conversation furnish her betrothed the opportunity of numerous internal sins, refuses to avoid him, because she fears that by keeping him away, she may lose the chance of getting married.

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Case X.

Occasion of Sinning.

I. Bertha, a servant, also sins with her master. Her confessor insists upon her leaving him, but she refuses to obey; because her master has promised to amend; because, for many years, he has not paid her, and if she were to leave her situation he would not pay her at all. The confessor gives her absolution. Six months later Bertha calls again, having sinned again, and giving the same reasons; she is absolved once more by her confessor.

II. Young Pascasius is fond of frequenting a neighboring

house, where he spends many hours with young girls, and beautiful, spiritual and graceful women, joking and laughing, although he meets with frequent temptations against chastity, movements entirely dissolute, and even, sometimes, pollutions. The confessor having insisted on his abstaining from going to these meetings, Pascasius declines to obey, because, says he, he is not giving his consent to temptations, at least, for the most part of the time.

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Case XI.

Habitual Sinners.

Maurice, a confessor, is well-known for his kindness in absolving penitents who repeat the same fault. . . . Thus, he absolved the following penitents: 1, Nigritius, a young man, who has been deep in shameful living for ten years, and his concubine's death brings forth better feelings; 2, Gaudeus, a drunkard, who has not made a confession for forty years; 3. Jucunda, a young girl, who is going to get married the following day, and for the last six months has sinned against purity with her betrothed.

Case XIII.

Relapses.

Caprasius, for a long time, has the bad habit of polluting himself. Often sent away without absolution, he comes finally, not corrected at all, and even guilty of a greater number of relapses, but deeply moved by the unexpected death of a friend of his, who has died without confession.

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Case XVI.

The Confessor Before Dying Persons.

Alinus, a new priest, is appointed vicar, as assistant to Parson Gerondius, who is getting old. Just after his arrival, Gerondius learns that Titius, who had been living in concubinage with a courtesan for years, is dying. "Go," says Gerondius to his new vicar, "you are young, and will get there sooner than I would;

so as to assist the young man who is in danger. Do not be afraid if this case, which comes unexpectedly, is very grave; for it is just the way, my friend, to acquire experience." The young vicar hastens to the house, though trembling with fear. Immediately he gives orders to send away the concubine; Titius refuses to obey: 1, because this woman is necessary to him, and to his family; 2, because he has had several children from her; 3, because, during a whole year, he has not sinned with her, and that he will soon leave this world. Albinus does not know whether he should give him absolution, strengthen him with the Eucharist, and administer to him Extreme Unction. Finally, he decides not to admit him to the sacraments, and comes back to the presbytery filled with sadness. Titius gave up the ghost, to appear before the tribunal of the redoubtable Judge.

Ques. What should be done if the concubinage was secret; in other words, if the servant had secret relations with her master?

Ans. If the concubinage is secret, it is not necessary to insist upon the separation itself, by refusing absolution, on account of the scandal which would generally result by sending away a concubine under such circumstances, for the secret relations would thus be brought to light. But it is necessary to obtain from the dying man the promise to send away his servant if he recovers; and in the meantime, to watch that their rooms be separated, and the servant approaches her master only in case of necessity. If death was not certainly expected, the sick man should not be absolved regularly, until the separation had taken place, if convenient.

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Case XVII.

The Confessor with Ladies.

Urban, a priest, with a sweet temper and tender heart, . . . welcomes all his lady penitents with the greatest amiability; makes the kindest remarks to them; encourages them to speak; and, above all, lets them babble as long as they like, listening to their tales with the greatest patience and most perfect gentleness. As

the feminine sex is by its nature talkative and loquacious in the highest degree, this method was very pleasant to them.

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St. Augustine says: "It is necessary to keep a short and severe language with women, and the most pious are not the least to be feared; for the more pious they are, the more attraction they have."

Concina says: "The Confessor, when hearing women, ought to be armed and supplied with a divine help, as if going to dare the hissing of serpents."

Impress this truth in your mind: "The wickedness of a man, is better than the kindness of a woman."

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Case XXIII.

Confessor's Error.

Sylvia asks the confessor Didyme, whether she can marry Sabin; she alleges the following reason: She has sinned often with Sabin's second cousin, although she was never pregnant. Didyme tells her that she can marry, thinking the obstacle to marriage, on account of shameful relations (*ex copula illicita*), does not extend beyond the first degree; and besides, he believed the shameful act consummated only when the woman becomes pregnant. Later on, anxious about the correctness of his decision, he does not know what he should have done.

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Cases on the Secret of Confession.

Case III.

Exterior Use of the Knowledge of Confession.

Parson Camille, hearing the confession of Bertha, his servant, who is sick, learns she is pregnant as a result of shameful relations. Astounded, and full of sorrow, he does not know what to do, in presence of the danger of such a dishonor. He puts off to another day the solution of so delicate a case until he may be enlightened upon it. But in the meantime Bertha recovers. Light comes into Camille's mind. A few days later he sends his servant away, saying, it is because of her bad health. Then, having decided to take Rosine as servant, and after having heard her confession, he learns that she has been seduced recently. Thus, instructed by a fatal experiment, he comes back to his first decision, in order not to be obliged to send his servant away again.

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Case IV.

Exterior Use of Confession.

Priest Ugolin, hearing the confession of young Adrienne, at the point of death, learns that she is just about being confined. The good priest advises her to tell her condition to a doctor or midwife, so as to save her offspring. But she will not listen to him, and, fearing dishonor, declares that she will not speak of it to anybody. The priest, full of sorrow, leaves the unfortunate woman without giving her absolution. Soon after Adrienne dies, and she is buried, with her offspring unbaptized.

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Case VII.

Accomplices Before the Same Confessor.

Ranulfe and Florine, betrothed to each other, just before their marriage, come to confess to Lampridius. Florine is first, and confesses, among other things, that she has sinned often with her betrothed. Ranulfe comes next, and completes his confession without mentioning the sin, and asks for absolution. The confessor, in great trouble, interrogates him, both with general questions and particular ones. He urges and plies his penitent, who still denies; and while tormenting him, Lampridius is himself the prey of the greatest torments. What shall the unfortunate confessor do? If he absolves his penitent, the result is a horrible sacrilege; if he sends him away without absolution, he violates the secret of confession!

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Case VIII.

The Secret for a Layman.

Ferfellius, recently married, confessing immediately after his wife, said, among other things: "Father, I am very unhappy! Just now I heard my wife charging herself with having committed fornication with my brother before her marriage. I have made up my mind to send her away. I will not acknowledge her any longer as my wife. The confessor, surprised, does not know what he may or should answer, without either betraying the secret of confession, or telling a lie. To get out of the difficulty, he blames his penitent much for having listened to his wife's confession. Ferfellius, indignant, retires; sends his wife away, after having cursed her; and tells the story to her parents, who were astonished at her return.

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Cases of Conscience on Extreme Unction, and on Order.

(These do not present any interesting features.)

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Treatise on Marriage.

The faithful must be taught carefully on the excellency of marriage and its sanctity, although the virtue of chastity * must be extolled above all.

* Marotte does not fail to expose this doctrine to the faithful of ten years:

"Ques. Is marriage a proper and holy state?"

"Ans. Yes, marriage is a proper and holy state. . . .

"Ques. Is there not a more perfect state than marriage?

"Ans. Yes; *Christian virginity is a state more perfect, and more agreeable to God than marriage.*" (*Petit Catechisme.*)

There are authors who insist more on the subject:

"Ques. Is it possible to keep virginity?

"Ans. Yes, it is possible to *keep virginity*, with the help of grace.

(*Catechism of the Diocese of Nevers*, 1877.)

In fact, writers of that school take and seem to look for every opportunity of attracting the attention of young children to these dangerous questions; and, consequently, provoking the most shocking explanations. I had the meritorious patience to read over a numerous series of small tracts, all very silly, which are published by Mame's, under the title of "Library of Pious Children." As frequently as opportunity offers, there is a question of virgins and virginity.

I will quote at random:

Saint Rose of Lima, made a vow to remain a virgin, but her friends urged her to marry; and in order to get rid of their solicitations, and to accomplish her vow more easily, she entered a convent. *Saint Euphrasie*, VIRGIN, SEVEN YEARS OLD, exclaims: "I will not have any other spouse but you." *Saint Julienne, a virgin*, "makes a vow of virginity." That is one book. Let us take some others: *Saint Geneviève*, seven years of age, declares: "For a long time, she had been wishing to live in perpetual virginity." *Saint Catherine of Sienne*, same age, "promised to re-

CHAPTER I.

AFFIANCINGS.

ART. I. Nature of affiancings.

722.— Affiancings are a deliberate promise (with a sufficient deliberation to involve a mortal sin), reciprocate, and expressed by a sufficient token, of future marriage between capable persons.

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723.— In order that the affiancings may be valid, there are required all the conditions named in the application, so that, if one of the conditions fails to be executed, the affiancing contract should be considered as void.

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725.—Ques. Should the promises made to contract marriage be considered as true affiancing?

Ans. It seems not; for, very often, such promises are considered as a mere project, and not as a true promise. In practice, it is necessary one therefore should be very careful regarding the particular intention of those who are affianced.*

main a virgin forever;" but God allowed her resolution to be subjected to a severe test. When she had scarcely reached twelve years of age, her parents thought to engage her in the state of marriage. In vain Catharine, refusing to obey, tried to maintain *her reasons*,— her reasons for remaining a virgin, at twelve years of age ! ! After that, you need not be astonished that this precocious young girl saw the devil "attacking her heart with the most humiliating temptations for a virgin!" *Saint Mary Magdalen of Paris*, "when ten years of age, made a vow to remain all her life united to the celestial Spouse by the ties of virginity." A year later, her parents wished her to marry: "She then declared to them her vow of virginity, affirming that she never would have any other spouse but Jesus." *Saint Victory*, "in order to unite the crown of martyrdom to the beautiful lily of virginity, offered to God the sacrifice of her own," and jumped through a window so as to run away, the very day of her marriage. *Saint Lucie*, long before having reached the age to be married, "completely absorbed with the charms of virginity, promised to God to have Him only as spouse" *Saint Isabelle*, when a mere child, engaged herself "by a vow of chastity." *Saint Radegonde* would have given up the world "to live in a perpetual virginity." *Saint Cecile*, from childhood, "had made a vow to embrace the holy state of virginity, and declined all marriage proposals. . . . Finally, obliged to marry a young, noble and wealthy lord, she obeyed; *but nevertheless remained faithful to the vow she had made to God.*" *Saint Ursule*, . . . But that is enough!

* For the oral instruction is reserved the more delicate studies on relations between the affianced, to which Sanchez devotes, in his classical

ART. II. Obligations and Purpose of Affiancings.

726.—Affiancings, from civil justice, compel, under penalty of a grievous sin, to contract marriage within a limited time; either fixed, or as soon as one of the two parties requests it reasonably; because, where there have been true affiancings, there also exists a true contract in a grave matter; and, consequently, a grave obligation.

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730.—Ques. Can it be accepted as true affiancings, the marriage being merely civil, such as takes place in France before a magistrate?

Ans. Some authors affirm it, if the contracting parties have the intention to apply to the Church afterwards. . . . But it is better to say that this contract contains no promise, and cannot be accepted as affiancings.

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ART. III. Dissolution of Affiancings.

731.—Ques. Is it a sufficient cause for dissolution, if a rich inheritance falls to the fiancé?

Ans. There is controversy: many theologians deny it, because nothing is changed in regard to the young lady; others affirm it, because between them the same condition of wealth no longer exists, and if the fiancé had foreseen such a change, he would not have engaged to the same person. This opinion is approved by St. Liguori, in a case where the fiancé having become richer, he was offered in marriage a young lady much richer than the former.

Ques. Are affiancings broken by the vow of chastity, or the vow to enter Holy Orders?

treatise *De matrimonii sacramento*, several dissertations, the titles of which, by a lucky chance, can be translated into the French language:

"Are shameful gestures, glances and speeches permitted between persons betrothed? (There are upon that subject 55 Articles!)

"Is it permitted to the affianced to take delight by anticipation, in thinking of the enjoyment they will obtain in their future sexual relations?" etc., etc. (Lib. IX., Disp. XLVI., XLVII.)

Ans. 1. If the vow precedes the affiancings, it is evident that they become void; because the promise of marriage is then an unlawful act, and consequently does not bind.

2. If the vow follows the affiancings, according to the more probable opinion, they are broken also; because such a promise is supposed to be contracted on the following tacit condition, "unless I may choose a better state." *

732.— . . . Ques. Should one of the contracting parties having a hidden physical defect, declare it before the affiancings; or if they are made, before the marriage?

Ans. No, if this defect does not render the marriage prejudicial, but only less attractive; for instance, if the young girl who is considered a virgin is not so; because, as has been established by custom, nobody is held to disclose to another any such things. Beside, no one is held to disclose his defects, at the risk of dishonoring one's self, when it does not injure any grave right of another person. . . .

CHAPTER II.

Publication of Bans.

ART. I. Necessity of bans.

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ART. II. Circumstances of bans.

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ART. III. Dispensation of bans.

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ART. IV. Revelation of the impediments.

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* Sanchez: "Every time a man, who has made, either sincerely or in a simulated manner, a promise of marriage, is dispensed by some motive from fulfilling his promise, he may, when summoned before a judge, affirm on oath that he has promised nothing, with the understanding, *so as he should be compelled to fulfil this engagement.* (p. 803.)
De Castro Palao, and other casuistic Jesuits, speak in the same way.

CHAPTER III.

The Nature and Purpose of Marriage.

ART. I. On the nature of marriage.

744.— . . . Marriage, so far as it is a contract, is an agreement by which the man and wife give to each other, reciprocately and legitimately, the use of their body, for all acts proper to generation; and engage themselves to live together.

As far as it is a sacrament, it is defined thus: Sacrament of the new law, sanctifying the legitimate union of man and woman, so as to bring up piously and holily their children.

There is a distinction between the marriage, legitimate . . . concluded . . . consummated: when the conjugal acts have been completed.*

*Justice must be granted to Gury, that he shortens singularly the dissertation so dear to casuistic Jesuits on the *consummation* of marriage. It is reserved for oral instruction. This is progress, from the laymen's point of view, who are, in fact, incompetent in matters of morality. But times must be hard, that one no more dares to speak with the same holy straightforwardness which old Sanchez used with regard to this. Here are, in fact, the titles of some delicate circumstances which he names, with full details, in Part II. of his famous work:

1. "Disp. XXI. Quando conseatur matrimonium consummatum?
2. Quando semen non recipitur in vase naturali, non est consummatum.
3. Quacunque arte, aut dœmonum ministerio is vase recipiatur, est consummatum.
4. Quid, si vir penetret vas fœmineum, non tamen intra vas seminet? Quid, si fœmina sola seminet?
10. Utrum satis sit virum seminare intra vas, fœmina non seminate?
11. An semen fœmineum sit necessarium ad generationem, et *possit dici Virginem illud ministrasse in Christi incarnatione?*"

This last illustration, which should raise the indignation and reprobation of all worshippers of the Immaculate Virgin, was specially dear to the Jesuits. Sanchez comes back to this subject in another part of Book II:

"Suarez fatetur cum aliis esse probabile adfuisse semen in Virgine, absque omni prorsus ordinatione, ut ministraret conceptioni Christi materiam. . . . Quod idem defendit *Pero Mato in append. at tract. de semine.* §*An vero Maria virgo*, et probat absque omni inordinatione et concupiscentia posse decidi semen.

"Quare concludo, esse probabile non consummari matrimonium nisi etiam fœmina seminet, quia ad matrimonii consummationem requisitur copula ex qua sequi potest generatio, etc., etc." Disp. 21.

Note, that it is absolutely necessary to be instructed on these different points, because, if the marriage is or is not consummated, it can or cannot be dissolved by the Pope, or by the religious profession.

ART. II. Purpose of Marriage.

SECTION 1.— Its Unity.

757.—Unity of marriage consists in marriage being the union of one man only with one woman only.

SECTION 2.—DURATION OF MARRIAGE.

There are distinctions regarding duration, viz: As to the *tie*, and as to the *bed*.

1st Point. *As for the tie.*

758—Marriage is indissoluble; that is to say, when it is once contracted, it cannot be dissolved by divorce in regard to the tie, according to the positive, divine law.

759.—However, three exceptions should be made:

1. The marriage of Christians, *concluded* but not *consummated*, can be dissolved for a grave cause, through a dispensation from the Pope, the representative of the Divine Power.

2. Marriage *concluded* and not *consummated*, can be dissolved by a solemn Religious Profession, made by one of the married couple.

But in order that the newly married couple might think over the use of this privilege, it is granted to them, by right, two months after their wedding, during which they are not compelled to fulfil their conjugal duty. Even after that time, if marriage has not been consummated, on account of an unlawful refusal of the conjugal duty, this privilege still exists. In fact, it is not destroyed by fornication between fiancés before the celebration of marriage.

3. The marriage of *infidels*, even *consummated*, can be dissolved by Divine permission, when one of the married couple is converted to the Christian faith by baptism, and the other refuses to live in peace with the former; or does so, insulting the Creator, despising the Christian religion, and trying to lead the faithful one to sin. . . . . .

2d Point: *As for the bed:*

760.—Divorce, so far as separation of bed and residence, may be requested for just causes, though the conjugal tie still exists, so

that neither of the spouses can marry again before the death of the other.

Causes which excuse divorce are: a mutual consent; a grave danger for soul or body; or adultery by one of the married couple.

764—Ans. Is divorce by private authority to be considered valid?

Ans. 1. Yes, as for the bed: if there is a legitimate reason, and especially adultery.

2. As for residence: 1, Yes, in case of adultery. . . . . But the crime must be certain; and that the separation should not cause a scandal which could not be mended otherwise. 2. Yes, also, if there is danger to soul or body, providing that danger is very grave. But in practice, it is proper to ask the advice of a prudent man, especially of a confessor. The latter should proceed with great prudence, and not believe too easily wives complaining of their husbands.

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CHAPTER IV.

Matter and Form of Marriage.

765.—The matter, far form the sacrament of marriage, is the body of the fiancés, that they reciprocately give up to each other in the execution of the contract.

The nearer matter is the delivery itself of these bodies, which is made by words or signs expressing their consent.

766. — The form consists in the reciprocate acceptation of the contracting parties, expressed by words or signs.

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CHAPTER V.

Minister who Gives and Person who Receives Marriage.

ART. I. Minister.

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ART. II. Person.

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CHAPTER VI.

Obstacles to Marriage.

They are of two kinds: some prohibit only; others nullify the marriage. The former render the marriage unlawful; the latter make it invalid.

ART. I. Prohibitive Obstacles.

776.—There are four, viz: 1, prohibition by the Church for different causes; 2, prohibition by the Church to celebrate the ceremony of marriage during a particular time; 3, contract of affiancings made with another person and not legitimately broken off; 4, a vow which, on account of its nature, can not be fulfilled in the contract or in conjugal society. . . .

779.—There are four kinds of vows forbidding marriage: 1, the vow of chastity; 2, the vow not to marry; 3, the vow to enter a religious Order; 4, the vow to receive Holy Orders.

780—*Vow of chastity.* After marriage, whoever has made such a vow can neither ask for nor do his conjugal duty the first two months; because, by a Divine privilege, husband and wife are dispensed from this obligation during that time.

Later on, he or she can fulfill this duty and give satisfaction to the other's right; but cannot ask for it without having been dispensed from his or her vow.

The latter should entirely abstain, if the other consents, or has lost the right to it; for instance, because of adultery, or incest. If too hard to live without it, he or she should make an early application for a dispensation.

781.—*Vow not to marry; or vow of virginity.* After marriage, one may, in this case, do and ask for the conjugal duty, because the observance of this vow is impossible.

782.—*Vow to enter a religious Order.* . . . Before marriage is consummated, the one who has made such a vow is held to fulfill it. He sins mortally if he consummates marriage, by asking for or doing the conjugal duty; because the vow ought to be accomplished when it is possible. Now, one can fulfill it by not consummating marriage the first two months; while, by a divine

privilege, one can enter a religious Order, and the other spouse is then free from the marriage tie, after the solemn profession has been made.

After the marriage's consummation, one can ask for and do the conjugal duty; because the fulfillment of the vow has become impossible, and the request for the conjugal act is not contrary to this vow, as one has not made a vow of chastity, but a vow to enter a religious Order.

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783.—*Vow to receive Holy Orders.* . . . He who has made this vow, after the marriage celebration, can consummate it, if he cannot longer fulfill his vow.

ART. II. Detrimental obstacles.

The Holy Church alone is able to state these obstacles, and consequently, secular princes cannot do so for their Christian subjects, except as regards mere civil matters.

787.—Ques. Is a contracted marriage annulled for an obstacle not perceived at the time of contract?

Ans. Yes, because the law stating such an impediment has been made for the purpose of cancelling the contract itself.

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If, after marriage, the wife perceives a detrimental obstacle which annuls marriage, she cannot, even under threats of death, either ask for or do her conjugal duty; because such a union would be a fornication, which is not permitted in any case; except, according to a few authors, the wife were to keep merely passive, so as to give but a material co-operation to this act; but one cannot make such a concession, as it is a question of a regularly bad thing, unless, according to the probable opinion, the wife should be forced to comply with it under threats of death, avoiding with care the danger of consenting.

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790.—Ques. Is it allowed to spouses to make use of marriage, if, after their wedding, they have doubt regarding a certain impediment?

Ans. to Question 1. No, until they have made sufficient investigation for the truth. However, if only one of the spouses is in doubt, he may, although not being able to ask for the conjugal duty, do it to the other, who is so requesting in good faith.

Ans. to Question 2. Yes, if after having used every effort to obtain the truth, one is still in doubt; because, in doubt, the act must be considered as valid.

791.—Ques. Is a marriage valid, when contracted with an obstacle presumed but not real?

Ans. Yes, if the contracting party is not certain of the impediment, but if he has merely a doubt on the subject. . . .

If he believes with certainty in this impediment regarding it as a secondary matter, and decides to live in concubinage, the marriage is evidently not valid; because the intention to contract marriage is not the main object.

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793.—Among Christians, any union of man and woman outside the Sacrament, and made on the strength of no matter what civil law, is nothing else but a shameful and fatal concubinage, condemned by the Church; and, consequently, the conjugal contract cannot exist outside this sacrament, and has entirely to do with the power of the Roman Church.*

VARIOUS KINDS OF OBSTACLES.

794.—There are fifteen, expressed in four Latin verses:

Error, condition, vow, relationship, crime;

Difference of worship, violence, Order, connection, honesty;

Age, alliance, secrecy, powerlessness, elopement of the woman, not placed in the hands of a trustworthy person:

All these impediments prevent marriage, and cancel it if it has taken place.

*"Ques. Are clandestine marriages void?

"A. Yes. Marriages which are celebrated otherwise than in presence of the priest and two witnesses are entirely void; *thus, in France, any marriage contracted solely before an officer of the state, is by right perfectly void, and is but a phantom of marriage.* (*Petit Catechisme of Marotte.*)

"Ques. Is the union called civil marriage legitimate?

"Ans. No; this union is void and criminal before God." (*Catechism of Nevers, 1887.*)

795.—All errors regarding personal identity cancel the marriage, by natural right.

An error relative to the *servile* condition prevents marriage by ecclesiastical right. But that cause exists no longer in Europe and the United States, where slavery is abolished.

Obstacle for Cause of Alliance.

810.—Alliance is a tie established with the relatives of the person with whom one has a carnal connection; or, further, a tie arising from a carnal connection between one and the other. There is consequently alliance between the husband and wife's cousins; and *vice versa*.

Alliance is acquired through either lawful or conjugal connection; or through an unlawful one, like fornication, adultery, incest.

811.—Alliance coming from a lawful connection prevents marriage until the fourth degree, inclusive; if from an unlawful connection, until the second degree only.

An alliance is contracted solely through a sexual act, thoroughly accomplished and consummated, in such a way that generation may be the result of it. . . .

812.— . . . He who has sinned with two sisters, or two cousins, or mother and daughter, cannot marry any one of them.

The husband who has sinned with his wife's sister, cousin, or aunt, is compelled to do, but cannot ask for the conjugal duty; because, as it is a question of a merely prohibitory law, the innocent party should not suffer for the fault of the guilty.

A husband is not deprived of the right to ask for the conjugal duty for having sinned with his own cousins; because he does not contract thereby any alliance with his wife's relatives.

If one of the married couple has formed an alliance with the other's relatives, in consequence of an incest, neither of them is entitled to claim the conjugal duty any more; because they have both lost their right, and, consequently, neither of them is held nor even has a right, to ask the other for it.

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OBSTACLE FOR DIFFERENCE OF WORSHIP.

824.—Difference of worship existing between a baptized person and an infidel, renders the marriage invalid.

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OBSTACLE FOR CAUSE OF CLANDESTINITY.

836.—A clandestine marriage is that which is contracted without the required religious solemnities; that is to say, without the attendance of the parson, and two witnesses at least.

837.—The Council of Trent has decided: "Those who try to contract marriage otherwise than in presence of the parson or another priest, with authorization of the bishop or the parson, and two or three witnesses, such persons are declared by the Holy Synod to be absolutely incapable of contracting marriage, and the contract is cancelled." Moreover, it declares that "this decree shall be in force in each parish after thirty days; which must be reckoned from the day of the first publication of it in the same parish."

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839.—Ques. Is a marriage valid, when the contracting parties leave a place where the decrees of the Council of Trent are in force, so as to go to another place where they are not?

Ans. It is not valid.

Ques. Is it valid, when one leaves a place where these decrees are not in force, so as to contract marriage clandestinely in another place?

Ans. No, even if contracted while passing through this place only. . . .

841.—Ques. Should heretical marriages be considered as valid, in places where those decrees are not in force?

Ans. Positively no; for the following reasons:

1. Because in all countries where decrees have been proclaimed, they oblige all people indiscriminately, heretics or Catholics, as the former are subject also to the jurisdiction of the Roman Church.

2. Because, if heretics were excluded from this general law of the Roman Church, they would so be granted a privilege for their rebellion, which would be absurd.

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852.—Ques. May a priest, constrained by violence and fear, grant a valid attendance?

Ans. Yes; because it is sufficient that he is present and knows what is done, either willingly or unwillingly, even if he pretends not to understand; for instance, by closing his eyes, or by stopping his ears.

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Obstacle through Powerlessness.

855.—Powerlessness to fulfill the marriage duties, or capacity to accept the carnal act efficaciously, with the result of generation, is of various kinds, viz:

1. Certain, or doubtful.
2. Antecedent, or consequent, with regard to marriage.
3. Temporary, or perpetual.
4. Natural, or accidental.
5. Absolute, or relative, as existing between the man and all women; or between the man and a special woman, or *vice versa*.

855.—1. Antecedent and perpetual powerlessness, either absolute or relative, renders marriage invalid, by natural right, because the purpose of the conjugal contract does not exist any longer when sexual intercourse is impossible.

2. Consequent powerlessness, and antecedent temporary powerlessness, do not cancel the marriage; because the actual use of marriage has no connection with its essence, and it is sufficient that the performance might have been possible at the moment of the contract, or may be so in future.

3. Powerlessness, positively ascertained, renders unlawful the use of marriage, even for a single trial; because, so long as the sexual intercourse cannot be perfect, the end which renders lawful this connection does not longer exist.

856.—Are eunuchs, deprived of the two testicles, considered powerless, and not those who have only one?

When in doubt regarding antecedent powerlessness, one should consider the marriage as valid, and allow a trial of the sexual act. Even three years are granted, in spite of the greater probability, for perpetual powerlessness.

When in doubt regarding consequent powerlessness, trials also are allowed, until certainty is reached that they cannot be effective.

Distinction must be made between powerlessness and sterility; for barren women are not powerless for the conjugal act; they consequently have the right to marry old men able to perform such acts. It is the same for women who can receive the semen without being able to keep it.

OBSTACLE FOR CAUSE OF ABDUCTION.

857.—Abduction consists in violently leading away a woman from a safe place to another where she is in the power of the seducer, with the purpose of marriage.

Abduction annuls the marriage between the seducer; that is, the man for whom the woman is carried away, and the woman who is carried away.

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860.—There is no obstacle when one leads away the woman from one room to another in the same house, because she is not really under the power of the seducer; but to constitute an abduction, she must be led away from one house to another.

There is no obstacle when the woman is carried away for another purpose than marriage; for instance, in order to satisfy the carnal passion, etc.; because the Council of Trent had mainly in view, by this impediment, to favor the freedom of marriage.

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III. Dispensation for Invalidating Obstacles.

THE DISPENSING POWER.

861.—The Pope can remove all obstacles, of ecclesiastical right.

A Bishop cannot ordinarily and by his own right remove invalidating obstacles.

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866.—Ques. What are the legitimate motives for removing such obstacles?

Ans. Smallness of the place, if there is fear that on this account the young girl cannot get suitably married to another; that is, such a place as does not contain more than 300 families, (this reason is valid, although the betrothed woman intends to go and live elsewhere); 2, absence of a sufficient dowry, when a dowry is offered by a cousin or a stranger on condition that the young girl shall marry her cousin; 3, advanced age, above an adult, of the woman; when she is over twenty-four years of age, and has not the means to marry a man of her rank; 4, carnal connection already, with a cousin or another person, causing an obstacle, and also the danger of dishonor, as a result of it; 5, too great familiarity between parties, leading to fear of a scandal, in case they were not to contract marriage; 6, a child to legitimatize, born or conceived of fornication; 7, to make peace between parents, cousins or relatives, by the marriage of applicants; 8, Christian virtues, which, perhaps, could not be secured any other way; 9, the excellency of merits towards the Church; 10, the preservation of property in a noble family; 11, abundant alms for pious work; 12, the poverty of a widow, having many children, which the husband promises to provide for.

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871.—Ques. Is a new dispensation required for the one who, after having been granted a dispensation for an *alliance* obstacle, on account of a forbidden connection, for instance, with his fiancé's cousin, sins again with the same woman before marriage?

Ans. 1. No; if the dispensation was not trusted for *execution* by the delegate; because such dispensations become effective only from the day of execution, and not from the date of issue.

2. No, even if the dispensation was trusted for execution; because the obstacle of alliance was already removed by dispensation, in view of marriage.

But if, after marriage, he has sinned again with the same cousin of his wife, he is deprived of the right to ask for the conjugal duty, because this dispensation, according to the Curia's style, was granted, "for the purpose of contracting marriage," and not of sinning more freely.

But another dispensation would be necessary, if he had sinned with another cousin before his marriage, even after the issue of the dispensation; because, by so doing, he would have contracted a new alliance.

871.— Ques. Is a new dispensation necessary, when, after having obtained a dispensation for relationship's obstacle, incestuous connection has taken place between the fiancés?

Ans. 1. Yes, if the connection has taken place before the execution of the dispensation. It is the common opinion, according to the Curia's style, which requires the declaration of an incest of that kind; for when it is declared, the Pope sentences the supplicant to a more severe penance.

2. No, if the connection has taken place after the execution of the dispensation; because it being granted, and prohibition removed, the crime of incest thereby ceases.

873.— Ques. Is a new dispensation required for relatives who, after having been granted pardon, repeat sexual acts?

Ans. No, because the incest is morally the same, and the number of acts need not be declared. So a new sexual act does not render the dispensation void, whether it has taken place before or after the issue of this dispensation.

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It is not necessary to tell in the request how many times sexual connection had taken place with the fiancé's cousin, because these different relations form but a single alliance. But it should be declared, if such is the case, when such a connection has taken place with several cousins of the fiancé, because there would have been, then, several alliances; and, although these obstacles are of the same nature, it is necessary to be precise as to their number.

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CHAPTER VII.

Marriage Made Valid Again.

890.—Marriage may be invalid: 1, for lack of consent; 2, for lack of the prescribed forms; 3, for incapacity of the parties.

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ART. I. Marriage made valid again, in case of lack of consent.

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ART. II. Marriage made valid again, in case of lack of the prescribed forms.

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ART. III. Marriage made valid again, in case of incapacity of the parties.

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CHAPTER VIII.

On Conjugal Duty.

Let us hear St. Liguori touching this question: "I am ashamed to speak upon this subject, full of repulsive matters, and of which the name alone disturbs chaste souls. But would that this matter were not so frequent in confession, and that the confessor had simply to know merely the main points. The chaste reader will forgive me, if I remain long on this subject, and even proceed into particular cases, which bring to light so much vileness.

[The following paragraphs are too indecent to appear in English; so they are left in the original French.—THE PUBLISHERS.]

ART. I.—DE LA LEGITIMITE DE L'ACTE CONJUGAL: 1° EN SOI, 2° PAR RAPPORT AUX CIRCONSTANCES.

§1. Légitimité de l'acte conjugal en soi.

907.—L'acte conjugal entre époux légitimes est honnête et licite par lui-même; car c'est le moyen établi et réglé par le Créateur pour la propagation légitime de l'espèce humaine.

Les fins qui rendent cet acte honnête sont: 1° la génération, l'une des principales; 2° le moyen de satisfaire à ses obligations envers l'autre époux; 3° le moyen d'éviter l'incontinence chez soi et chez l'autre; 4° le désir de ranimer ou de faire naître un amour honnête, de montrer ou de provoquer l'affection conjugale.

908.—L'usage du mariage est illicite s'il a lieu en vue du seul plaisir, ce qui résulte de la 9e proposition condamnée par Innocent XI., proposition ainsi conçue: "L'acte conjugal accompli en vue du plaisir seulement est exempt de faute et de péché véniel." En principe, cependant, il n'y aurait qu'un péché véniel, comme lorsqu'on mange en vue du plaisir seul qu'on éprouve. Mais il n'y a pas de faute si c'est pour remédier à la concupiscence ou pour une autre fin honnête que l'on cherche le plaisir, soit expressément, soit implicitement.

L'usage du mariage est gravement illicite s'il a lieu dans un esprit d'adultère, de telle sorte qu'en s'approchant de son épouse, on se figure que c'est une autre femme.

L'usage du mariage est permis aux gens stériles, et parce qu'aucune loi qui ne s'y oppose et parce que les gens stériles sont aptes à l'acte conjugal; si aucune génération n'en résulte, c'est tout à fait accidentel; et, en dehors de la génération, il y a d'autres fins honnêtes qui légitiment cet acte.

Même les vieillards, dont la semence n'est plus prolifique, peuvent user du mariage, pourvu qu'ils puissent accomplir suffisamment l'acte ou qu'ils aient un espoir fondé de l'accomplir, pour les mêmes raisons que nous avons exposées à propos des gens stériles; ce qui est confirmé par la pratique de l'Eglise, qui bénit le mariage des vieillards.

§ II. Légitimité de l'acte conjugal par rapport aux circonstances.

I.— Circonstances de personne.

Il y a trois circonstances ou empêchements de personne qui peuvent s'opposer à la demande du devoir conjugal : 1° vœu de chasteté, 2° alliance par suite d'inceste, 3° impuissance corporelle.

Quant à la parenté spirituelle, il y a controverse.

909.— Tout époux lié par un vœu de chasteté, ou empêché par une alliance, ne peut demander le devoir conjugal sous peine de péché grave ; mais il peut le rendre à l'autre qui le lui demande, et même il y est tenu, parce que l'autre partie ne doit pas être privée de son droit.

Aucun des deux ne peut le demander, s'ils sont liés tous les deux par un vœu de chasteté ou empêchés par une alliance.

910.— On doit rendre le devoir conjugal et même on y est tenu si, non seulement avant le mariage, mais encore après le mariage, on a fait un vœu contraire au droit de l'autre ; car, bien qu'on ait péché en contractant le mariage, on a remis cependant d'une manière valable à l'autre époux, ce qu'on avait promis à Dieu ; d'ailleurs l'autre, ignorant le vœu, a acquis le droit à la chose en vertu d'un contrat valable.

On peut le demander et le rendre, si après le mariage, on fait vœu d'entrer en religion ou de recevoir les Ordres sacrés après la mort de l'autre époux ; et l'on n'a pas besoin de dispense, car ces vœux n'obligent qu'après la dissolution du mariage.

Selon l'opinion plus commune et plus probable, un époux, lié par un vœux ou empêché par une alliance, peut demander le devoir, s'il remarque que l'autre n'osant pas le demander est en danger d'incontinence ; il le peut, même toutes les fois que l'autre le demande, d'une manière interprétative par exemple, lorsque la femme est retenue par la honte et que le mari sent sa volonté de le demander, parce qu'alors cela est plutöt rendre que demander.

Mais l'époux empêché par un lien ne peut exiger le devoir, pas même pour éviter l'incontinence, car ce danger d'incontinence est une raison d'obtenir une dispense ou une suspension du vœu, et non de demander le devoir.— Excepté, selon l'opinion probable, s'il s'agit d'empêchements imposés par l'Eglise, et si la dispense

ne pouvant être obtenue promptement, il y a un grand danger d'incontinence en attendant.

II. — Des Circonstances de Position.

911.— La position tout à fait licite est celle que la nature enseigne, c'est-à-dire la femme couchée dessous, et l'homme dessus, parce que les autres positions sont contraires à l'ordre de la nature et conséquemment, portent quelque atteinte à cet ordre.

Aucune position, quoique contre nature, n'est en principe gravement défendue, pourvu que l'acte conjugal puisse être accompli, parce qu'il n'y a pas d'obstacle à la génération.

Toute position contre nature, pour un motif légitime, est exemptée de faute, car parfois ces positions sont plus commodes ou seules possibles; et toute commodité ou nécessité peut rendre légitime cette dérogation à l'ordre, légère en elle-même.

912.— Il n'y a aucun péché à changer la position à cause du danger d'avortement au moment de la grossesse, à cause de l'embonpoint (*pinguedinem vel curvitatem*) de l'homme, ou de la fatigue de la femme, ou même de la froideur, lorsqu'on est plus excité dans cette position.*

La position qui seule est possible, n'est condamnée en aucune façon quelle qu'elle soit, bien qu'il en résulte une perte notable de semence, parce que cette partie de semence n'est pas nécessaire à la génération, et se perd accidentellement, malgré les époux.

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III.— Des Circonstances de Temps.

Elles ont rapport aux temps de la grossesse, de l'allaitement, des menstrues, de la maladie, des fêtes, et de la sainte communion.

913.— 1° Dans aucun temps, l'acte conjugal n'est interdit en principe sous peine de péché grave, parce qu'il n'y a aucune loi empêchant cet acte pour raison de temps. J'ai dit *en principe*, parce qu'à cause des circonstances il peut y avoir un proche danger d'avortement ou de maladie; ce qui est très-rare et ne peut être prévu dans certains cas.

* Si l'homme ne peut être amené à connaître sa femme, hormis dans une certaine position, qui doutera que la femme est tenue de la prendre? Sanchez, *de matrimoni*, (Lib. VII, Disp. XCII.)

Bien plus, selon beaucoup de théologiens, l'acte conjugal n'est pas même légèrement défendu pour raison de temps, parce qu'il n'y a aucune loi pouvant l'interdire même sous peine de péché léger. Cependant saint Liguori admet plutôt l'opinion qui trouve un péché véniel dans l'acte sexuel au moment de la grossesse, à moins qu'il n'y ait danger d'incontinence, ou quelqu'autre raison honnête.

D'après l'opinion plus commune, l'acte sexuel au moment des menstrues est un péché véniel, à cause de l'indécence qu'il cause, à moins qu'il n'y ait quelque raison qui le rende légitime. . . . Il faut en dire autant de l'acte sexuel dans les jours qui suivent l'accouchement.

914.— L'acte conjugal n'est pas défendu au moment de l'allaitement, parce qu'il n'y a aucune loi qui l'empêche et aucun danger, d'après l'expérience, de supprimer le lait. Les époux n'ont donc aucune raison de s'abstenir de cet acte à ce moment, en craignant de pécher.

L'acte conjugal au moment de la maladie n'est défendu ni sous peine d'un péché grave, ni sous peine d'un péché léger, parce qu'il n'en résulte aucun préjudice pour les époux ; l'effet qui accompagne l'acte ne peut avoir, au moins ordinairement, d'influence sur la maladie.

Selon l'opinion plus probable, il n'est pas défendu les dimanches et jours de fête solennelle, et parce qu'aucun droit ne s'y oppose, et parce que cet acte n'empêche pas les époux d'observer les fêtes. La plupart des SS. Pères qui font des objections à ce sujet, paraissent plutôt donner des conseils que des préceptes. On peut en conclure que cet acte n'est pas défendu non plus en temps d'Avent ou de Carême.

Enfin, en principe, il n'est pas défendu, même sous peine de péché léger, le jour de la sainte communion, bien que les époux communient seulement par piété, pourvu qu'ils accomplissent cet acte pour une fin honnête ; parce que l'indécence qui naît de la volupté charnelle est compensée par l'honnêteté d'une foi droite et voulue par Dieu, fin que se proposent les époux. . . . Voir *Sanchez*, L. IX, D. XIII., qui a traité cette question avec soin, et mieux que personne.

ART. II. — De l'Obligation d'Accomplir l'Acte Conjugal.

915.— Il y a une obligation de justice, grave en principe, de rendre le devoir conjugal à l'autre époux qui le demande sérieusement et raisonnablement, parce que, d'après la nature du contrat conjugal, les époux se donnent mutuellement la puissance sur leur corps, pour l'usage conjugal. . . .

II. En principe il n'y a aucune obligation de demander le devoir conjugal, parce qu'aucun des époux n'est tenu d'user de son droit, et tous deux peuvent en faire remise. Cependant, accidentellement, il y a obligation de le demander par charité ou à cause d'une autre vertu, surtout de la part de l'homme, par exemple s'il juge que sa compagne est en danger d'incontinence parce qu'elle n'ose le lui demander, ou si la demande est nécessaire pour entretenir ou ranimer l'amour conjugal.

III. L'obligation de le rendre cesse pour l'un des époux lorsque cesse pour l'autre le droit de l'exiger, ce qui arrive dans les cas suivants ; 1° si l'un des époux a commis un adultère ; 2° si celui qui le demande n'a pas l'usage de la raison, parce que sa demande n'est pas humaine ; 3° si celui qui le rend peut craindre raisonnablement un préjudice ou un danger pour sa santé ; car les époux ne sont pas censés s'obliger à rendre le devoir en subissant un si grand préjudice ; 4° si celui qui le demande a perdu ce droit à cause d'un inceste avec les parents de l'autre époux au premier ou au deuxième degré, ou pour une autre cause.

916.— Les époux sont tenus d'habiter ensemble, et l'un ne peut s'absenter longtemps sans le consentement de l'autre ou sans nécessité ; car cette obligation découle de celle de rendre le devoir conjugal. Or, les causes légitimes de s'absenter pour longtemps sont l'intérêt public, la subsistance ou le salut de la famille, un mal à éviter de la part de ses ennemis, etc. Mais le mari qui va habiter longtemps ailleurs, doit emmener son épouse, pour qu'elle habite avec lui.

Un époux qui refuse le devoir conjugal pèche gravement, s'il y a danger d'incontinence ou d'un grave ennui chez l'autre ; de même s'il le refuse à l'autre qui le demande sérieusement. Mais il en est autrement si celui-ci n'insiste pas, ou ne le demande que mollement.

Il ne pèche pas en le refusant lorsque l'autre le demande avec excès, par exemple trois ou quatre fois dans la même nuit ; ni s'il le remet à un temps rapproché, par exemple à la nuit, ou du soir au matin, en mettant de côté le danger d'incontinence.

Il faut blâmer les épouses qui refusent le devoir sans raison suffisante à leurs maris qui le demandent même mollement, ou qui ne cèdent que contraintes, ou qui leur reprochent ces demandes avec dureté.

Une épouse n'est pas dispensée de rendre le devoir à cause des inconvénients ordinaires de l'accouchement, de la grossesse, de l'allaitement, ni à cause de douleurs vives, mais courtes, ni à cause de douleurs longues mais modérées, par exemple de douleurs de tête pendant plusieurs mois après l'accouchement, ni à cause d'un petit affaiblissement dans la santé, parce que tous ces inconvénients sont inhérents à la condition du mariage ; il en serait autrement s'il y avait un grave danger de mort ou d'une maladie sérieuse, d'après le jugement d'un médecin prudent.

Un époux n'est pas obligé de rendre le devoir conjugal à l'autre souffrant d'une grave maladie contagieuse, par exemple, de la peste, d'une maladie vénérienne. De même, à cause du notable affaiblissement du corps, on en dispense ceux qui sont atteints d'une forte fièvre ou d'une grave maladie.

Un époux n'est pas dispensé de le rendre, parce qu'il craint d'avoir trop d'enfants, car la procréation des enfants est la fin principale du mariage, et n'est pas un inconvénient intrinsèque pour ce même mariage.

ART. III.—Des Peches des Epoux.

917.—Il y a les péchés venant de l'acte conjugal accompli par excès, c'est-à-dire avec des actes inutiles à la génération, et les péchés venant de l'acte conjugal par défaut, lorsque l'acte essentiel manque, ou lorsqu'on souille le lit conjugal par le crime de l'Onanisme.

§ 1. Des péchés des époux par excès.

Il y en a trois sortes :

1° Ceux qui sont nuisibles à la génération, comme la sodomie, la pollution ;

2° Ceux qui sont utiles, comme les attouchements qui entretiennent et excitent l'amour ;

3° Ceux qui ne sont ni nuisibles, ni utiles, sont dits en dehors de la nature.

918.—I. Tout ce qui est nécessaire pour accomplir l'acte conjugal ou pour le rendre plus facile, plus prompt ou plus parfait, est absolument permis aux époux ; parce que celui qui a droit à la chose a droit aux moyens nécessaires, utiles et non défendus, pour y arriver ; et si l'on permet la chose principale, on permet aussi la chose accessoire, ou le moyen qui y conduit.

II. Tout ce qui est nuisible à la génération dans l'acte conjugal, tout ce qui procure une pollution en dehors de l union naturelle, est gravement défendu, parce que l'effusion volontaire de la semence n'est permise qu'en vue de la génération, et par suite le mariage ne donne aux époux le droit que de répandre la semence utile à la génération. Autrement si les hommes pouvaient jouir de ce plaisir sans avoir la charge subséquente de nourrir et d'élever leurs enfants, on ne songerait guère à la génération des enfants, même on l'éviterait, et la société inclinerait vers sa fin.

III. Tout ce qui est inutile ou indifférent à la génération, même d'une manière indirecte ou éloignée, ou à l'amour conjugal qu'on veut exciter, est un péché, mais seulement véniel : 1° c'est un péché, parce qu'on ne cherche que le plaisir, et qu'il y a une subversion de la fin et une jouissance déréglée, dans une chose permise en elle-même, aux époux ; 2° il n'y a qu'un péché véniel, parce qu'on ne cherche pas la volupté en dehors du mariage et que l'acte, par sa nature, vise à des rapports permis. Il est vrai que la circonstance de la fin légitime manque, mais ce défaut n'amène qu'un déréglement léger et, par suite, seulement un péché véniel.

On peut donc ainsi résumer ces trois règles : tout ce qui est *pour* est permis, tout ce qui est *contre* est péché mortel, tout ce qui est *en dehors* est péché véniel.

919.— Il n'y a pas de faute dans des baisers honnêtes, dans des attouchements sur les parties honnêtes ou moins honnêtes, destinés à montrer l'affection conjugale ou à entretenir l'amour, même si accidentellement il en résulte une pollution *involontaire*, parce que toute marque honnête d'amour, même tendre, est permise à ceux

qui, d'après le lien du mariage, ne doivent faire qu'un *seul cœur*, une *seule chair*.

Il n'y a pas de faute *en principe* dans les attouchements et les regards peu honnêtes, s'ils visent immédiatement à l'acte sexeul. Il en est de même, s'ils sont simplement déshonnêtes, mais nécessaires ou utiles pour exciter la nature ; car alors ils sont comme une préparation à l'acte, comme des préliminaires. Il n'y a que des péchés véniels, si l'on cherche seulement le plaisir, même si ces actes précèdent immédiatement l'acte ; mais il y a péché mortel s'ils exposent l'un des deux époux ou tous les deux au danger d'une pollution avant l'union charnelle, ce qui arrivera facilement si on les prolonge avant l'acte conjugal.

Il y a péché véniel dans les attouchements, les regards et les propos honteux qui ne visent pas immédiatement l'acte sexuel, et n'ont pas pour but d'entretenir l'amour légitime d'une manière modérée et raisonnable.

Il n'y a pas péché grave, même si ces attouchements sans intention d'union conjugale amènent un ébranlement des esprits ou des membres propres à la génération, ou s'il en résulte des pertes séminales, bien que ces actes soient péché mortel chez les personnes libres ; parce qu'en dehors du crime de pollution volontaire ou de sodomie, on ne fait rien de contraire au mariage.*

Mais on doit prendre garde de ne pas courir le danger de pollution, ce qui arrivera facilement si les mouvements sont déréglés. Aussi, bien qu'en principe les époux ne commettent pas de péché mortel qui, ayant commencé l'acte conjugal, s'entendent pour ne pas le terminer, et ne se mettent pas en danger de pollution, saint Alphonse fait remarquer avec raison qu'ordinairement il y a péché mortel, parce que, ordinairement, ce danger existe.

* *Sanchez*, Lib. IX., Disp. XLV., traite *ex professo* et avec un luxe inouï de détails, ces graves questions :

"Utrum conjugibus liceant delectationes morosæ, tactus, aspectus, verbia turpia, cum pollutionis prævisæ, sed non intentæ periculo? Et generaliter quando pollutionis periculum efficiat novam culpam mortalem, vel talem, quæ antea mortalis minime erat?"

Il y là dessus quarante et un articles ; je me contente d'extraire le problème posé par l'article 34. La solution importe peu ; tout le génie consiste à avoir imaginé le problème :

"Quid, si vir a fœmina petat, ut ejus virilia attrectet, moveatque, an velit digitos in uxoris vas intromittere, ibique persistere, quasi copulam exercendo, utens digitis instar membri virilis?"

920.—Il n'y a pas de péché grave et même léger, selon l'opinion plus commune et plus probable, de la part d'une épouse qui s'excite par des attouchements à répandre la semence aussitôt après l'acte dans lequel le mari seul l'a repandue : 1° parce que cette semence est destinée à accomplir l'acte conjugal, pour que les époux ne soient proprement qu'une seule chair et, de même que l'épouse peut se préparer à l'acte par des attouchements, elle peut également le terminer par des attouchements ; * 2° parce que, si les femmes, après une telle excitation, étaient tenues de réprimer les mouvements naturels, elles risqueraient de pécher gravement.

Les attouchements sur soi-même, en vue du plaisir vénérien, en l'absence de l'autre époux, selon l'opinion de plusieurs, constituent un péché grave, même en mettant de côté le danger de pollution, parce que l'époux n'a pas le droit de se servir de son propre corps pour son plaisir, mais seulement pour l'acte conjugal. Cependant, beaucoup d'autres, d'après saint Alphonse, ne voient là qu'un péché véniel. Saint Alphonse regarde la première opinion comme plus probable, et comme devant être suivie en pratique.

*On doit même le lui conseiller : "Conjugi tardiori ad seminandum *consulendum* est ut ante concubitum tactibus venerem excitet, ut vel sic possit in ipso concubitu simul effundere semen." Cependant "non est necessario et conjux prius seminans non tenetur alium exspectare." Ainsi parle *Sanchez*, et il se pose à ce propos une série d'incroyables et intraduisibles questions, auxquelles il répond avec les plus minutieux details : "An sit mortale, quoties non simul conjuges semen consulte effundunt? . . . Quid, si vir se provocet ad prius seminandum? . . . Num fas viro sit continuare concubitum, ubi prius seminaverit, ut fæmina seminet? . . . An sit culpa lethalis, sive conjuges, sive soluti, a copula inchoata desistant ante utriusque seminationem, maxime si alter seminarit? . . . Quando sit licitum, et quando culpa, et qualis si vir, fæmina non seminante, nec seminandi periculum patiente, de ejus consensu ante consummationem se retrahat a copula incepta? . . . Quid, si jam fæmina seminaverit, aut seminandi periculum subeat? . . . Quid, si è contra vir seminarit, et fæmina non seminet, sed se retrahat, nitaturque non seminare? . . . An ubi sola fæmina seminarit, possit vir se retrahere, si advertat sibi mortis periculum imminere, si seminet; vel quia supervenit hostis aut fera.

"Conjugibus inhoneste coëuntibus subito adesseat aliqui, non damnandus esset vir, qui post fæminæ seminationem, ante propriam, ex his urgentissimis causis recederet, quamvis ita Venus in eo irrita esset, ut membro virili ex vase fæminæo extracto, fore animadverteret, ut ipso invito semen extra flueret. Quare. . . .

"Quid, de conjuge semetipsum tangente? Quid si se tangat, sciens fore ut præveniat semen fæmineum, vel fæmina, quæ nondum seminarat, se tactu provocet, ubi vir membrum contraxit." etc., etc.

Sanchez, De matrimonio, Lib. IX., Disp, XVII., XIX et XLIV.

Si l'on prend plaisir d'une manière prolongée à penser à un acte sexuel passé ou qui doit avoir lieu à un moment éloigné, en dehors du danger de pollution, il n'y a qu'un péché véniel selon l'opinion commune : 1° Il y a un péché, car ce plaisir, n'étant pas rapporté à un acte proche, est un dérèglement, puisqu'il n'a pas de fin honnête et qu'on excite inutilement les esprits génitaux ; 2° un péché véniel, car l'acte étant permis en principe aux époux, il ne peut être gravement défendu d'y penser avec plaisir. Mais il n'y a pas de faute dans une simple pensée sur les rapports passés ou futurs. Même, ni le désir au sujet d'un acte futur, ni le plaisir à penser à un acte passé, ne sont illicites en principe, à moins qu'ils ne soient rapportés qu'au seul plaisir de l'union charnelle, car le désir au sujet d'une chose permise ne peut être défendu.

§ 2. De l'Onanisme en particulier.

921.— L'Onanisme consiste en ce que l'homme, lorsque l'acte sexuel est commencé, se retire avant devoir répandu sa semence qui se perd en dehors, afin d'empêcher la génération. Tout le monde voit que c'est chercher le plaisir, sans vouloir assumer les charges du mariage.

Il tire son nom d'Onan, deuxième fils du patriarche Juda qui, après la mort de son frère Her, fut forcé, selon la coutume, d'épouser sa veuve Thamar, pour donner une postérité à son frère ; mais "s'approchant de l'épouse de son frère, il répandait sa semence à terre pour que des enfants ne naquissent pas sous le nom de son frère. Aussi le Seigneur le frappa parce qu'il faisait une chose abominable." Genèse, XXXVIII, 9 et 10.

922.— L'Onanisme volontaire est toujours un péché mortel, en tant que contraire à la nature ; aussi il ne peut jamais être permis aux époux, parce que ; 1° il est contraire à la fin principale du mariage, et tend en principe à l'extinction de la société, et par suite renverse l'ordre naturel ; 2° parce qu'il a été défendu *strictement* par le Législateur suprême et Créateur, comme il résulte du texte de la Genèse cité tout à l'heure ; 3° parce qu'il a été condamné par Innocent XI.

Le mari Onaniste commet toujours un péché grave et ne peut

être absous, à moins de regretter sincèrement son péché et de se proposer de l'éviter à l'avenir.

L'épouse peut être excusée du péché si, pour de graves raisons, elle est forcée de rendre le devoir conjugal, pourvu qu'en elle-même, elle ne donne pas son assentiment à ce péché, et qu'à l'extérieur, elle manifeste sa répugnance par des avertissements sérieux et par des marques de mécontentement. La raison est que: 1° elle accomplit un acte licite, et use d'un droit dont elle ne peut être privée par la faute de son mari; elle ne coopère pas *proprement* à son péché puisqu'elle reste passive, et que l'action coupable intrinsèquement ne consiste que dans l'acte du mari se retirant contre la nature; 2° parce qu'elle n'est pas obligée par la charité d'empêcher le péché de son mari en subissant un grave préjudice; 3° parce qu'il est établi par les réponses du Saint-Pénitentiaire, qu'il ne faut inquiéter aucune femme à ce sujet.

923.— Une épouse pèche gravement quand elle pousse son mari à mésuser de mariage, même indirectement ou tacitement, par exemple en se plaignant du grand nombre de ses enfants, des douleurs de l'enfantement, ou en répétant qu'elle a failli mourir dans ses dernières couches. A plus forte raison, elle pèche gravement si, malgré son mari, elle se retire avant l'effusion de la semence.

Elle pèche gravement aussi en consentant elle-même à l'acte détestable du mari, tout en manifestant sa répugnance extérieurement. Si, cependant, il n'y a de sa part qu'une satisfaction inefficace, non au sujet de l'acte coupable en soi, mais de ses conséquences, par exemple des inconvénients de la grossesse, des dangers de l'accouchement, en principe elle ne pèche pas, bien que cette satisfaction ne soit pas sans péril. Mais elle doit éviter tout à fait qu'en la manifestant à son mari, elle ne le rende plus ardent à pécher plus librement et plus souvent.

L'épouse est tenue, du moins ordinairement, d'avertir l'époux de l'obligation d'agir selon la règle, et de le détourner, autant que possible, de sa manière d'agir coupable. Elle ne doit pas se contenter de l'avertir une fois, mais réitérer ses avertissements, à moins qu'elle ne soit assurée que cela ne servira de rien. Cependant elle doit, même dans ce cas, montrer sa répugnance de

quelque maniére, pour ne pas paraître donner son assentiment au péché de son mari.

Le devoir de l'épouse est aussi d'engager son mari par des caresses, par différentes marques d'amour, par des prières, des exhortations, à accomplir l'acte conjugal selon la règle, ou à s'en abstenir absolument. L'expérience montre que beaucoup de maris onanistes, ainsi engagés par leurs femmes, se sont corrigés.

. . . . . .

925.— *D.* Une épouse peut-elle demander le devoir conjugal à son mari Onaniste?

R. Oui, selon l'opinion plus probable, pour un motif grave, par exemple, si elle est exposée au danger d'incontinence; en effet elle a droit au rapport sexuel.

926.— *D.* Une épouse péche-t-elle en donnant son consentement interne à la volupté, lorsqu'elle peut permettre l'acte conjugal à son époux onaniste?

R. Non, pourvu qu'elle ne donne pas son assentiment au péché du mari. Car, puisqu'elle ne péche pas en permettant cet acte, elle ne péche pas en consentant au plaisir qui en résulte, bien qu'elle sache que son mari ne terminera pas l'acte conjugal: car cet acte est en soi honnête et permis à la femme, et il ne dépend pas d'elle qu'il soit accompli selon la règle.

Cases of Conscience on Affiances.

Case II.

Value of Promises.

Quirinus, a young man of noble birth, having fallen blindly in love with Rosalie, a young girl of common extraction, promised to marry her without the knowledge of his parents. The latter, learning of his foolish promise, lost no opportunity of opposing such a scandalous marriage. Quirinus, seeing his parents so afflicted, and being unwilling to crush them with sorrow, is himself in great trouble. What shall the unfortunate man do? He begins by showing less affection to Rosalie, and finally comes down to coldness; then, pleading the opposition of his parents, he breaks off the engagement with his betrothed.

Ques. 1. What value have promises made without the approval of one's parents?

Ques. 2. May promises be made in spite of parents?

Ques. 3. Had Quirinus the right to persuade Rosalie to cancel her promises?

Ans to Question 1. They have some value *in themselves*. The reason is, that the choice of a situation or state should be free and independent of any foreign influence. Marriage contracted without the approbation, and in spite of the wish of parents, being valid; so are, with more reason, the promises leading to marriage, although they are less substantial.

I have said "in themselves," because there are some cases in which promises made in spite of parents would be worthless; for instance, if a grave scandal should result from the marriage, serious quarrels between parents, etc. Justice does not compel to an act which cannot be done without sinning. However, difference of rank does not necessarily invalidate promises, if the affianced are aware of its importance.

Ans. to Question 2. No, in a general manner, because sons are held to respect their parents, and in so grave a matter to ask their consent or advice; except in cases in which sons foresee that their parents would be opposed to an honorable and suitable marriage. But, above all, one should be careful not to trust one's own judgment.

Ans. to Question 3. There is controversy between theologians as to whether the opposition of parents is a sufficient cause for breaking off a promise of marriage. But it is necessary to make a distinction, after St. Liguori: if parents are making an unjust opposition to marriage, promises cannot be broken; it is different if the opposition is justifiable: for instance, if the marriage would bring dishonor on the family. Therefore, in this case, Quirinus was right in breaking off these promises, though they may have been valid at the start; because the opposition of his parents was justifiable. But it was useless for him to try to persuade his betrothed, through hardheartedness, to retract her promise; it would have been sufficient for him to retire, pleading the just and very grave opposition of his parents.

. . . . . .

Case VI.

Conditional Consent.

Odilon and Odilia, cousins of the second degree, are affianced, upon condition that they can obtain a dispensation from the Pope. On that understanding, by common agreement, they send a supplication to Rome, in order to obtain the said dispensation. In the meantime Odilon, having become acquainted with another young girl, more beautiful, named Virginia, with a larger dowry, who has not heard of his first promises, makes her new proposals. A little while after, on the eve of the marriage between Odilon and Virginia, Odilia receives the dispensation, and immediately claims from Odilon the fulfillment of his promises. Odilon, perplexed, asks his confessor what he should do. The latter does not know what advice to give.

Ques. 1. What must we think of the first and last promises of Odilon?

Ques. 2. What should he be advised, or ordered to do?

Ans. to Question 1. His first promises were worthless; for, in the first place, they were conditional, and the betrothed's consent was given before the realization of the condition; in the second place, they had been made when an obstacle existed, as follows from what has been said.

Ans. to Question 2. As regards the promises made to Virginia, it is not a very clear case. The opinion of a theologian considers it of no value. The reason is: although Odilon was not tied to his espoused by the regular obligations of betrothal, he was engaged to her by true obligations of affiances, on the strength of the promise made to her, and by which he was held to wait for the result of the request for a dispensation. He therefore was not at liberty to make a new promise without violating this grave obligation. Consequently, this new promise cannot be authorized; and moreover it is entirely worthless, as he made it to the prejudice of his first betrothed.

Another opinion, probable in a positive manner for me, acknowledges that this last promise is of some value; for, from what has been said, if the former is worthless, the latter is valid; as the first engagement being void, cannot oppose the validity of the second one; and the consent given by Odilon to wait for the result of the request to the Pope cannot be in opposition to the validity of the second. For it would result that the engaged man sinned only by breaking his engagement; that is to say, he has violated the promised faith; but the new promise he contracted is not worthless.

Ans. to Question 2. In presence of the above controversy, one cannot compel Odilon to wed Odilia; but he may be allowed to marry Virginia; as, from what has been said, in a probable manner, the promise made to her is valid, and he is tied to her. He must, therefore, be left in peace.

Case VII.

Breaking off Affiances.

Leopold, a law student, made a promise of marriage to Domi-

tilla, a most honorable young girl, after he had graduated and become a lawyer. Within the space of three years her met her frequently, and renewed to her the word given; which attached her so to him that she did not hesitate to decline another very honorable offer. But Leopold, having heard an eloquent sermon on the vanity of worldly things, decided to bid farewell to the seductions of this world. Hence, to act with more prudence, he wished to take spiritual exercises in a convent of Regulars; after which, with his confessor's consent, he makes a vow of chastity, and enters the Order. Without delay he wears the religious dress, receives minor orders, and for a whole year he occupies himself studying theology. Learning this, Domitilla charges him with having broken his promise, while she, on the contrary, had kept faithful, even to the refusing of another offer. By numerous letters and unceasing complaints, she endeavors to make him change his mind. Leopold, in his perplexity, asks advice of his confessor.

Ques. 1. How may valid promises be broken off?

Ques. 2. What must Leopold be advised, or ordered to do?

Ans. to Question 1. Valid promises may be broken off, if one of the affianced chooses a more perfect state; because, while contracting a promise, he is not deemed to renounce forever the option of a more perfect situation.

Ans. to Question 2. Leopold should be advised to fulfill faithfully his two vows, and to recommend his affianced to God by earnest prayers. If she has refused another favorable engagement to keep true to Leopold, it is an accidental case, a misfortune, which she should endure peaceably, until she finds another party to suit her.

Case VIII.

Breaking off Affiances.

Corneille, betrothed to Eleonore, has the weakness to indulge in fornication. A short time afterwards, Eleonore soils herself with the same crime. Corneille, already sorry for not having chosen a richer woman, seeks this opportunity to break off from her, in spite of her claims.

Ques. *Quid*, in this case?

Ans. Corneille was free, more probably, according to St. Liguori, to disengage himself, on account of the fornication of his fiancé, although he had also himself committed the same crime.

Case IX.

Breaking off Affiances.

Edmund became engaged to Ellen, a young girl of the same rank and fortune as himself. But on the eve of their marriage, he comes into the inheritance of a deceased uncle. He consequently takes his leave of Ellen, to marry another woman as rich as himself.

Ques. 1. Is the change of fortune of one of the affianced, sufficient to break off promises?

Ques. *Quid*, in this particular case?

Ans. to Question 1. If one of the affianced loses considerable money, it is a sufficient reason for the other to withdraw on account of this change of fortune. But if one of them becomes much richer, for instance, by receiving a good inheritance, is that one at liberty to withdraw? One is disposed to answer in the affirmative; because, in fact, the result is a great difference of fortune between the two parties. St. Liguori, Voit, etc., proves that this this is the opinion of the greater number. However, there is a common opinion which affirms the contrary; because nothing being changed regarding the other party, the fortunate fiancé should not abandon her.

Ans. to Question 2. Edmond must not be molested, such, at least, is the probable opinion, for having broken off his promise after he had received a large inheritance; because there follows from this a great difference of wealth between him and his betrothed. This reason is valid only, if the inheritance was not expected, as it is supposed to be in this case.

Case X.

Breaking off Affiances.

Bibiane, a young lady endowed with the finest physical and

intellectual qualities, attracts the attention of many young men. Several ask her in marriage; but she prefers Sidonius, to whom she is engaged. The wedding-day being near, Bibiane goes to confess, and, among other sins, she declares that: 1, she has lost her virginity, by repeated fornication; 2, she is one month on in pregnancy, through shameful relations with the latter young man; 3, she has had a child already, without anybody knowing it except the midwife, who took it to an orphan asylum. Hearing these words, the confessor, astounded, is perplexed to know whether he must compel her to declare these facts to her betrothed, or break off her promise. But, he thinks, after all, that it is better to keep perfectly silent; he therefore gives her absolution, and she is married on the morrow.

Ques. 1. Should engaged persons declare grave sins committed by them before the celebration of marriage?

Ques. 2. Was Bibiane under obligation to declare the sins?

Ques. 3. What must we think of her confessor?

Ans. to Question 1. 1, Yes, if such sins are likely to be prejudicial to the other betrothed, to or cause dishonor to him or to her; for instance, if the affianced man has a venereal disease, or if the affianced woman is pregnant from another man. In such a case the affianced is obliged to confess the truth to the other, or, to withdraw. The reason is, by contracting marriage under such circumstances the affianced would cause prejudice to the other party.

2. No, if such sins are not gravely prejudicial to the other betrothed, or do not cause him particular harm: for instance, if the affianced woman has lost her virginity, if she is quarrelsome, etc., etc. The reason is, that no one is held to degrade one's self by confessing publicly sins not gravely prejudicial to others.

Ans. to Question 2. 1, Bibiane is not held *per se* to confess that she has committed fornication and lost her virginity, because this sin is not prejudicial to her betrothed. Although, when learning the truth, he may have the right to withdraw; however, as long as he does not make any opposition, the betrothed woman can maintain her rights to affiances. And, although she should not deceive a man by making him believe she is free from reproach, she is not held to confess her sin to him; and she may, if questioned about

it, even dissimulate, and answer equivocally: as, by so doing, she does not lie, but only conceals a sin she desires to keep secret.

2. Nor is she held to confess to her betrothed that she has had a child; and that she sent it to an orphan asylum or some other secret place, providing she pays for and has the means to provide for her child, in case a charge is made on this account. The reason is, that in such a case he does not wrong her betrothed, as no prejudice will result to him therefrom. It would be different if the fact could not be kept sufficiently secret to be concealed from her betrothed forever; because, from the knowledge of such sins, very grave quarrels might follow after marriage.

3. But she is held in principle, *per se loquendo*, to confess to her betrothed that she is actually pregnant, or to withdraw her promise; because, otherwise, she would greatly wrong him, by introducing a stranger child into his family; that is, a child for which he would have to provide and to make his heir, in common with his legitimate children. There is to be added, the grave inconveniences which would result should the matter be made public; which might easily occur should the child be born in the eighth month after marriage. Several make an exception, in case on the eve of the wedding the young girl could save her honor only by marriage; because she is not expected to incur so great a prejudice as the loss of her honor for the sake of sparing her betrothed such a passing prejudice. This exception seems to be approved by St. Liguori.

Ans. to Question 3. What should we think of the confessor? From what has been said, it is clear enough that Bibiane's confessor has dealt with the matter very lightly indeed, by keeping completely silent. In principle, he could not grant her absolution without compelling her to declare her situation to Sidonius, or to retract her promise, as has been aforesaid. However, the trouble of this unfortunate woman might have been such, that, in order to save her reputation, or the honor of a *noble family*, and avoid a great scandal, the confessor may have, and even should, let her go in peace. Would to God that such situations were met with less frequently! How many betrothed persons deceive one another! Before their marriage, it should be repeated to them: "*Nimium ne crede colori*," Do not trust appearances!

Cases on Publication of the Bans.

Case IV.

Obligation to Declare Obstacles to Marriage.

Cocles, at the point of marrying Marine, after the publication of the bans, declares to his intimate friend, Fabius, whom he requests to swear to keep the secret, that he has had shameful relations with Marine's sister. Fabius, much exercised, is doubtful whether he should be faithful to his word, or to the Church, which requires witnesses to make known all obstacles to marriage.

Ques. Is Fabius excusable for not declaring the above obstacle?

Ans. No, because the secret, either promised or intrusted, even sworn to, does not bind, in itself, when a great damage is likely to result therefrom either to the community or to a third person. Now, the making known of such an obstacle is useful to the Church, and to the contracting parties themselves, etc.

. . . . . .

Case V.

Obligation to Declare Obstacles to Marriage.

I. Lescadie confesses to having sinned formerly with Antoine, her sister's betrothed. Hubert, her confessor, urged by his zeal, after having admonished her seriously, orders her to declare immediately to her parson, outside of confession, the obstacle to marriage caused by her fault.

II. Siagrius and Melitina are soon to be married; Valerius is positive that Siagrius has sinned with Melitina's sister. He declares the fact to the parson; but he cannot furnish any positive proofs, and desires that his name should not be mentioned. The priest does not know what to do, etc., etc.

. . . . . .

Case II.

Consent of the Spouses.

Jorinius, a married man, leaves his country on business, and has guilty relations with Therese. Representing himself to be a single man, he marries her; but soon after abandoning her, he returns to his own country. Upon his arrival, he learns that his wife was dead at the time he married Therese. He thinks of going to fetch Therese to bring her back with him, when he learns that Emilie, a very rich widow, intends to marry again. Seizing the opportunity, he makes proposals for her hand. This new wedding over, coming to better feelings, he goes to the priest and confesses the whole matter. The confessor doubts the validity of the two marriages, the former with Therese, and the latter with Emilie. His doubts comes from the fact that Jorinius could not be considered as being seriously married, he knowing in each instance that he was not free, as this had happened in both cases.

Ques. 1. Is the marriage of Jorinius with Therese valid?

Ques. 2. Is his marriage with Emilie valid?

Ans. to Question 1. No; for having no doubt of the existence of his wife, he was not able to give a true consent. His consent was but fictitious in his marriage with Therese. That is to say, he had simply intended to live with her in concubinage, under the pretense of marriage; which is clear from all the circumstances of the case: this marriage therefore was of no value. But there was no obstacle on the ground of criminality; firstly, because Jorinius' wife *was* dead when he had relations with Therese, and had promised to marry her; next, because, even if he had committed adultery by promising marriage to Therese, this adultery would

not have existed in principle on either side, and one of the conditions required to constitute an obstacle by crime was lacking.

Ans. to Question 2. Yes, as it results from what has been said; for, if something was opposed to the validity of this marriage, there would be the marriage contracted with Therese; but that was worthless. Therefore, . . . And there cannot exist any difficulty through Jorinius having married Emilie, while considering himself tied to Therese; for, not knowing whether his wife was living or not, he was not certain of the validity of his marriage with Therese; and, consequently, he married Emilie, as he had the right to do, for there was no obstacle in this case. Therefore his union with Emilie is valid, and he ought to be left in peace.

Case III.

Conditional Consent.

Patricius, a young man belonging to a noble family, but himself poor, has a very rich aunt, who will make him her heir providing he marries a person to her liking. Travelling in a foreign port, and having the opportunity, he dishonored Martine, through promise of marriage, and even caused her to be pregnant. Threatened by the young girl's father, he marries her, upon condition that his aunt will consent to it, because he cannot contract marriage in spite of her without losing a great inheritance. But he was positive that his aunt would never consent to it. Martine's father, however, assisted by a friend, takes such successful steps that the aunt at last consented. Patricius learning this, runs away, comes back to his own country, and gets married to another young lady.

Ques. What are we to think of this case? and what ought Patriciusto do?

Ans. Patricius' first marriage is worthless, in the absence of a true consent; for, not wishing in fact to marry Martine, he gave but an insincere consent. The reason is, that when giving a conditional consent, he was sure that the condition would not be realized. Therefore, this consent in fact is void; and consequently the

marriage contract is void also. The best proof is that, when l arning that the condition was realized, contrary to his expectations, he ran away, not considering himself bound by the marriage.

. . . . . .

As for the second marriage, it is valid; . . . therefore, he may live in peace with his second wife.

Case IV.

Dissolution of Marriage.

Benjamin, a Jew, had contracted and consummated marriage with Anna. About two years later, converted, through the zeal of a Catholic priest, and initiated into the mysteries of the Christian religion, he embraced this religion with greatest sincerity. He uses his earnest efforts to bring his wife to acknowledge the truth, but without success; for Anna, although not refusing to live in peace with him, declares that she will remain faithful to the Jewish law forever. What shall Benjamin do? Deserting his wife, he bids farewell to society, and to serve God in a more perfect manner he enters a religious community, where he makes his vows, after one year of noviciate. Several years later, Anna, who had not married again, receives baptism, and expresses a desire to live with her husband. Benjamin is uncertain whether this is allowed, or if he may return home.

Ques. 1. What are we to think of this case? and what should Benjamin do?

Ques. 2. Might Benjamin have contracted another marriage, if he had not entered into religious Orders?

Ans. to Question 1. Benjamin has the right to desert his wife, enter a religious Order, and make valid vows.

Ans. to Question 2. There is controversy. Many answer negatively. . . . A great number answer in the affirmative. St. Liguori considers the latter opinion as more probable.

. . . . . .

Case V.

Dissolution of Marriage.

Felicien having married Sylvie, the marriage not being yet

completed, says farewell to his wife and the world to enter a religious Order, and makes solemn vows. Sylvie herself enters a nunnery, and in presence of the bishop makes a simple vow of chastity. Soon after, her fervor decreasing, Sylvie leaves the convent and returns to society. Then she goes to a foreign country, where she marries Hermann, from whom she hides her former life. But, acquainted with the facts, Hermann, considering his marriage void, sends Sylvie away, and decides to contract another marriage. But before so doing, he asks the advice of his confessor.

Ques. 1. Do solemn vows cancel marriage?

Ques. 2. Is Sylvie's marriage with Hermann valid and permissible? What is to be thought of Hermann's intention of marrying again?

Ans. to Question 1. Yes, provided the marriage is only concluded, but not consummated.

Ans. to Question 2. This marriage is valid. But Sylvie sinned gravely by marrying again, because she broke her vow of chastity, by which she was bound. She should have requested a dispensation from the Pope. As regards Hermann, whose marriage is valid, he cannot marry again. He must be advised to live in peace with Sylvie.

Case VI.

Separation of Bed and Residence.

Marcellin obtains separation from his wife, convicted in adultery by a court of justice; he makes up his mind to enter a monastery, and successively he receives the sacred orders. But scarcely has he received ordination, before his wife proves her innocence in court, and requests her husband to return home.

Ques. Is Marcellin held to come back to his wife, and live with her as man with wife?

Ans. Yes; because his wife, unjustly deprived of her rights, can re-claim them. Then, if she does so, they must be given back to her. Marcellin, therefore, should return to lay life. But as he has made a vow of chastity, he cannot ask for the conjugal duty, but only render when requested. But, so as to pay to the priesthood the respect which is due to it, he should request his wife, and never try to persuade her, to give up her rights and leave him alone.

Cases on Obstacles to Marriage.

Case I.

Value of Obstacles.

Celine, a young girl, under peculiar circumstances, being involuntarily in a state of drunkenness, was dishonored by Titius, being unconscious of the fact. Several years after, Celine marries Caius, Titius' brother. Later on, having learned of the event from Titius' own mouth, she has doubts about the validity of her marriage. In haste she runs to Parson Germain, and explains the circumstances. But he tells her: "Have no fear, my daughter, there is no penalty where there is no sin; and besides, an unknown law does not bind any one."

Ques. *Quid.*

Ans. Germain made a scandalous and very gross error; in fact, it is not question of penalty, but of the law of the Church, which annuls such a marriage; therefore, Celine's marriage is not valid, and cannot become so without a dispensation. Germain should be sent back to the study of Moral Theology.

Case XIII.

A Woman who is Sister, Daughter and Wife of Her Husband.

Ludimille, a widow of a noble family, who had fallen in a shameful love with her own son, Jules, finds out that during the night he goes to sleep with the servant. Then she imagines an abominable scheme. She finds a pretext to send her servant away, and slips into the latter's bed. Jules, without the least suspicion, arrives at the appointed time, and unknowingly commits with his mother the most horrible incest. However, her son resides for

about fifteen years in far-off countries, engaged in business transactions. During his absence from home, Ludimille secretly gives birth to a girl, who at first she places under the care of a nurse, and later on takes back with herself as an orphan child. Jules, coming back home, falls in love with this young girl. He asks his mother as to her rank and birth-place. His mother replies that she is a child of the lowest extraction, whom she has taken home and brought up for charity's sake. Jules, feeling his passion increasing, declares to his mother that he will marry her. The mother steadfastly refuses, because such an alliance would bring dishonor upon the family, for the young girl has neither fortune nor family. Jules, becoming obstinate, in spite of his mother, marries the young girl. Consequently, the true and natural father has married his own daughter, and the step-brother his own step-sister.

Ques. Can a dispensation be obtained from the Pope? Should the spouses be admonished to separate from each other?

Ans. (The answer is of little interest. The interesting fact is this little romance of clerical lubricity; and in all this, there is not a single word of indignation; but the casuist recommends perfect silence.)

Case XIV.

Spiritual Relationship.

Silver, a married man, had adulterous relations with Lucie, his servant, and the birth of a child was the result. Fearing scandal, he had it baptized secretly, and left it at the door of an orphan asylum. His wife being dead, he marries Lucie.

Ques. What are we to think of this marriage?

Ans. It is void; for Silvie, by baptizing the child he had with Lucie, contracted with her spiritual relationship.

Case XVI.

Affinity.

Albin, engaged to Blandine, had shameful intercourses with Catherine, Blandine's cousin of the second and third degrees,

mixed. In spite of that, he marries Blandine. The latter having deceased, he marries Agathe, second cousin of Catherine, and third cousin of Blandine.

Ques. 1. What are we to think of this double marriage?

Ques. 2. *Quid*, if Albion had not fulfilled the first one?

Ans. to Question 1. The first marriage is valid, because illegitimate relations constitute an obstacle up to the second degree only.

The second marriage is void for two reasons, if considered either with reference to proper or improper relations: 1, as Agathe was Blandine's relative of the second degree; 2, proper relations hinder marriage up to the fourth degree.

Ans. to Question 2. This marriage would not be valid, for the first reason. . . .

Case XVIII.

Honesty.

I. Kilian, calling on Rosalie, his betrothed, who had been seduced by him, takes some liberties with Euphemia, his sister, who presently becomes pregnant. However, Rosalie is taken sick and dies. In order to hide his crime and avoid dishonor, Kilian immediately marries Euphemia.

II. Daniel, engaged to Eulalie, has sinned with Anna, her sister. Eulalie, learning that her sister is pregnant from Daniel, gives up her rights, so that her betrothed might marry Anna, and save the honor of the family.

Ques. 1. Is the marriage of Kilian with Euphemia valid?

Ques. 2. *Quid*, the marriage of Daniel with Anna?

Ans. to Question 1. The marriage of Kilian with Euphemia is not valid, for two reasons: first, an obstacle caused by alliance; next, an obstacle arising from public morality.

Ans. to Question 2. The marriage of Daniel with Anna is not valid on account of the obstacle of public morality, in consequence of the preceding promise to Eulalie.

Case XX.

Murder.

Martial, during his wife's sickness, commits adultery with Flor-

ine through promising to marry her, she not suspecting him to be married. His wife being dead, and the promised marriage with Florine fulfilled, Martial commits adultery again with Mœvia. Seeing the latter pregnant, he poisons his second wife to marry Mœvia, and to keep his good reputation.

Ques. Are these two marriages valid?

Ans. Martial's marriage with Florine is valid, because, not knowing that her husband is married already, she had not committed adultery in principle, but only in practice. . . . His further marriage with Mœvia is valid also, as there existed no obstacle. None has been caused by the adultery alone, as he had not made her a promise of marriage. Nor has there any obstacle arisen from the murder alone, there being no mutual co-operation. Neither is any obstacle caused by both of them, as Martial had not informed his accomplice of his intention to marry her, and such previous information must be considered as probably required to make her his accomplice.

Case XXI.

Murder.

Leonilla, disgusted with her husband, a very old man full of disease, wished hundreds of times he would die. One day, locked in her chamber alone, she exclaimed: "Good God! If, at last, I should be delivered from this terrible plague, with what pleasure I would replace this disgusting old man by marrying my young servant!" The latter, hearing this, goes at once to the bedside of the poor sick man, and causes his speedy death, by giving him an extra dose of strong drugs. Then, the mourning-time over, he marries Leonilla.

Ques. Is this marriage valid?

Ans. This marriage is valid; because there has been neither plot to put to death, nor mutual consent to kill, the unfortunate old man. For, although Leonilla had uttered complaints heard by her servant, and had expressed the desire of marrying again, no mutual consent had been exchanged to cause the death of her husband; and in fact the servant killed his master without the knowledge

of his mistress; consequently, there is no obstacle caused by the crime, and their marriage is valid.

Case XXII.

Crime.

Melany, a married woman, is induced to commit adultery with Donat, he artfully promising her marriage. Her husband dies soon after, and leaves her the inheritance of the whole of his property. Donat, in the hope of possessing the fortune, fulfills his promise of marriage; but soon, quarrelling with his wife, he abandons her; and learning that marriage is often cancelled by a crime, he asks the advice of his confessor, and inquires of him if he can marry another wife.

Ques. Is there any obstacle to his second marriage?

Ans. No; the second marriage is valid, because the promise to the first wife was sincere, and such a promise does not bind.

. . . . . .

Case XXIII.

Crime.

I. Evrald, a married man, not aware that Julia is married also, induces her to commit a crime through promise of marriage as soon as he is free from his present relation. Julia accepts. Soon after both become free, and are united in marriage.

II. Leofrild, a bachelor, urges Tarsile a married woman, to commit adultery with him, and promises to marry her when her husband dies. Tarsile is seduced thereby; but promises nothing, and remains silent. Soon after her husband dies, and the marriage takes place.

Ques. 1. Is there an obstacle through crime, in the first case?

Ques. 2. *Quid*, of the value of the marriage, in the second case?

Ans. to Question 1. An obstacle has been caused by crime, as there was positive adultery, and an accepted promise of marriage.

Ans. to Question 2. The marriage is valid. . . . Tarsile did not consent, though yielding her body. It must not be inferred,

from her silence, that she was accepting; she was simply excited, and led away through sensual desire.

Case XXIV.

Crime.

Chrysante promised Flavie, who is married already, to marry her after the death of her husband. Then, falling in love with Rufine, he marries her. Nevertheless Chrysante commits adultery with Flavie. Later on, it happens that Chrysante's wife dies, and Flavie loses her husband. They take consolation in their mourning, through the pleasure of preparing for a new marriage.

Ques. Is this marriage valid?

Ans. There is no obstacle to this marriage; an adultery and a promise of marriage did not happen in this case; the promise made by Chrysante to Flavie having been withdrawn before the adultery, at least in effect, when he married Rufine, after having made a promise to Flavie, and before the adultery was committed. Consequently, there was no united adultery and promise of marriage: so the marriage is valid.

Case XXVI.

Fear.

Leonard, after having made a vow of chastity, dishonored Veronique, under promise of marriage. Then he refuses to fulfill his promise, pleading his vow. Alberic, brother of Veronique, a student in theology, says that Leonard should make application for a dispensation, Leonard being no more bound by his vow of chastity. But the other two brothers of Veronique, not being acquainted with theology, have recourse to another kind of argument: the most terrible threats are made against Leonard if he does not marry Veronique right off. What shall the unfortunate young man do? He marries Veroniqne, so as to avoid greater misfortune.

Ques. 1. Was Leonard, in spite of his vow, compelled to marry Veronique?

Ques. 2. Is the marriage valid? and what should be done?

Ans. to Question 1. No, for two reasons: 1, The promise of marriage made after his vow was of no value; and consequently

was not binding upon him. 2, Leonard could not promise to a human being, what he had already promised to God by vow.

Ans. to Question 2. This marriage seems worthless. If Leonard, constrained by threats, gave only an insincere consent while simulating the celebration of marriage, it is clear that it is worthless; for, in the absence of consent, a contract does not exist. If Leonard had given a true consent, the marriage is likewise worthless as being contracted under the excitement of a violent fear; for the threats made by Veronique's brothers, to urge Leonard to marry, form a grave and unjust proceeding, at least as means of reparation. It would be a different case if the young girl's brothers had threatened Leonard, not in view of marriage, but to revenge their honor; and if Leonard had seriously consented to the marriage to appease them. Then, the fear would not be unjust, not having for its aim the compelling him to marry.

Case XXXIII.

Marriage of Heretics.

Tarsille, a heretical woman, married to Drusille, also a heretic, in a place where the law of the Council of Trent is in force, is struck by divine grace and embraces the true faith, in spite of her husband, who remains in his error. Anxious, she calls on Bernard, her confessor, and asks him what she should do. The priest answers: "Thou shouldst desert thy husband for the sake of thy salvation, and because thy marriage is cancelled. Thou canst also marry another man."

Ques. Can Tarsile continue to live in marriage relationship with Drusille?

Ans. In principle, the confessor's answer is to be admitted. . .

Case XXXIV.

Attendance of the Priest.

I. Sabin had promised Sabine to marry her, in spite of his parents. The priest, called by them to celebrate their marriage, and at the same time requested by Sabin's father not to assist

them, declines to comply with their request as long as the father is opposed to their marriage. But during the celebration of the mass, while the priest turns towards the people, the betrothed step to the altar, with two witnesses, and declare that they take each other for man and wife. Then they retire, and thereafter live together.

II. Gétule, having made a promise to Clara, abandons her, to marry Blandine. Learning this, Parson Abundius refuses to help them. What shall Gétule and Blandine do? They ask an intimate friend to invite the parson to dinner, with two other friends, who will stand as witnesses. During the repast, Gétule and Blandine present themselves, and declare before all, in a loud and clear voice, that they take each other as man and wife on the spot. The parson, astounded, exclaims that he was not thinking to attend a marriage ceremony, and that a marriage is not celebrated during the progress of a dinner. On his refusal, the betrothed retire, and commence living together.

Ques. Are such marriages valid?

Ans. The marriage is valid, in the first case. For it was sufficient that the priest had been notified that the betrothed wished to contract marriage in his presence, and had knowledge that their consent was reciprocate.

In the second case, the marriage is valid also; because it is evident, under the circumstances, that the priest was a witness, and in fact has witnessed, knowing and having seen the marriage.

Case XXXVI.

Attendance of the Priest.

Bertold, a wealthy man and a bachelor, is in the habit every year of spending the month of September in a distant province. Improving an opportunity, although a septuagenarian, he decided to marry Flavienne, in spite of his relatives, who coveted his inheritance. He desired the marriage to take place in his country mansion, while residing there, so as to celebrate it with splendor. The parish priest is called; he blesses the marriage, and takes

part in the joyful feast. Later on, Bertold dies childless, leaving by will all his property to his wife. But his legitimate heirs pretend that Flavienne was not Bertold's legitimate wife, because the priest had given an unlawful assistance to the marriage, and that, consequently, it was worthless.

Ques. Is the marriage valid?

Ans. This marriage is not lawful; because one month's residence is required for contracting legal marriage in French provinces.

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Cases on Dispensation for Marriage.

Case II.

Exposition of the Case.

Nicetas has committed the crime of incest with two sisters, Rufine and Lawrence, his third and fourth cousins. Later on, wishing to marry Rufine, he requests of the Pope the necessary dispensation, naming only the fourth degree condition, but not mentioning either his third cousin, or his criminal relations with his betrothed and her sister. In another request, he mentions only the obstacle resulting from alliance. Once married, he tells the whole story to his confessor, who does not know what to think touching the validity of the marriage.

Ques. Is this marriage void on account of the omission in the request of the circumstances relative to the improper connection between the betrothed?

Ans. Yes; . . . Nicetas, therefore, must make a new application for a dispensation, and, while awaiting the answer, must abstain entirely from giving or asking for the conjugal duty.

Case II.

Exposition of the Case.

Gilbert has sinned with Delphin, his third cousin; both had the intention to do so for the purpose of obtaining more easily the required dispensation from the Pope. He asks for the dispensation by reason of relationship, confessing the sexual intercourse, but omitting the true motive which had prompted it. After his marriage, Gilbert, exercised by scruples of conscience, confesses that motive. His confessor does not know if a new dispensation is necessary to perfect the marriage.

Ques. What is the value of this dispensation?

Ans. It is without any value, and the marriage is void. . . .

If only one of the betrothed has had, when committing the sexual act, the hope of obtaining the dispensation more easily through this very fact, there would be controversy about the validity of the marriage.

Case IV.

Surreptitious Dispensation.

Fabius and Agnès, second and third cousins, send a request to Rome for a dispensation to get married. They affirm in the request, that they never had between themselves any sexual intercourse. The dispensation is granted and forwarded to the parson, who receives instructions to dispense them if their request is based on the truth. The priest has a talk with the betrothed, and questions them, to ascertain if they have positively had no criminal intercourse together. They both answer in the negative with reference to the time before their application, but they acknowledge their guilt since sending the said request. The priest is very undecided as to whether the dispensation is valid. Besides, seeing all the preparations for the expected marriage, and the relatives already arrived and waiting, he feels in the greatest trouble.

Ques. Is a new dispensation required?

Ans. It is necessary, if the relations took place before the issue or execution of the dispensation. . . . It would be a different case if the act had taken place after; because, once the dispensation is granted, there is no more incest to fear.

Case V.

Surreptitious Dispensation.

Quirinus and Germaine, not aware that they are fourth cousins, have committed the shameful sin. Subsequently, learning of their relationship, they still renew the incest several times. After their betrothal and the publication of the bans, this obstacle prevents their marrying, and they petition for a dispensation from the Holy See. But they mention only having had improper connection not knowing their relationship, and keep silent as to the further

sins committed after they knew of their alliance; they consequently are led to doubt the validity of their marriage.

Ques. What is the value of this dispensation?

Ans. It is of no value.

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Case VI.

Surreptitious Dispensation.

Longin and Pelagie, third cousins, became engaged, with the intention of asking for the required dispensation. The party appointed by them to draw up the petition mentions in it that the betrothed have had connections together, . . . which was not true. The priest considers the dispensation as obreptitious and void, and postpones the marriage to a later date. But it happens that the betrothed fall into crime, and a child is the result. Then they ask again for a dispensation, so as legitimatize their child. But the child dies just on the receipt of the document, and the marriage celebration.

Ques. What was the value of those two dispensations?

Ans. Both were valid.

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Case VII.

Dispensation for Guilty Relations, with Relapse.

I. Reculfe, wishing to marry Martine, asks for a dispensation, because he has sinned carnally several times with his betrothed's second cousin. But, before the receipt of the document, Reculfe, under the impulse of human frailty, falls again into the same act with the same person. The confessor is in doubt whether he should give the dispensation its true value.

II. Marius and Anne, cousins, request the Holy See for a dispensation to marry, confessing that they have committed incest together. But after having obtained the dispensation they fall again; thus they committed the act before and after its receipt. Hearing the facts, the priest does not know whether a new dispensation is necessary. However, presuming its validity, he blesses their marriage.

Ques. 1. Is the dispensation valid in the first case, notwithstanding the repeated sexual relations?

Ques. 2. Would it be valid if Reculfe had sinned after the issue of the dispensation?

Ques. 3. Has Marius and Anne's dispensation been valid, although they have committed incest again and again, before and after the issue of that dispensation?

Ans. to Question 1. The dispensation is valid, in spite of the repeated sexual acts. The reason is, that Reculfe, by renewing the crime with the same relative, has not made a second obstacle to his marriage. . . .

Ans. to Question 2. Yes, also. . . .

Ans. to Question 3. Yes. . . .

Case X.

The Validity of Marriage Restored.

Ranulfe and Tarsile contracted a clandestine marriage; in other words, a civil marriage only; and remained for many years in that regrettable state. At last, while attending spiritual exercises in her parish church, Tarsile, deeply impressed by a sermon on God's judgment, comes to a better mind, and earnestly desires to receive the matrimonial blessing. But Renulfe, though urged by his wife, declines to go to church, where he has not been for twenty years. The priest, with two missionaries, calls on the man, to advise him to change his mind, but in vain. "Leave me alone," said he, "I am sufficiently married! I live happy and satisfied with my wife, and do not wish for anything else." Having received this unsatisfactory answer, the priest and his company leave the house.

Ques. What are we to think of the priest's behavior? and what was his duty?

Ans. He should have advised Ranulfe to renew his consent in his presence, and in that of his two missionary friends, as witnesses of his declaration; which might have been easily obtained, considering his words, "I live happy and satisfied with my wife." Why did they did not think of it? They showed a lack of wisdom. But, if Ranulfe had refused to renew his consent? He then should have been induced to do so in some other way, either by proxy, or to make request for a dispensation.

Cases on Direction of Married Persons.

[The following is too suggestive to translate.—Publishers.]

Cas I.

Obligation de Remplir ses Devoirs.

I. Ursule, femme mariée, craignant les douleurs de l'enfantement et les ennuis de l'allaitement, se décide à refuser à son mari d'accomplir le devoir conjugal. Ne voulant pas changer de résolution, elle ne peut obtenir l'absolution de son confesseur.

II. Germaine, mère de famille, refuse également, parce qu'elle a déjà une famille trop nombreuse, et qu'elle est fort pauvre. Il vaut mieux, dit-elle, ne pas mettre au monde des enfants que de les vouer à la misère.

III. Agnès refuse aussi, parce qu'elle sait, et par sa propre expérience, et par une consultation des médecins, qu'elle ne peut enfanter sans s'exposer à un danger de mort.

IV. Victoire est fort affligée parce que tous ses enfants sont morts : elle ne veut plus en mettre au monde, et refuse à son mari le devoir conjugal.

V. Tècle a la conscience fort tourmentée parce que son mari s'acquitte souvent du devoir conjugal d'une manière véniellement coupable, par exemple, en se plaçant dans une position contraire à la nature.

D. Que faut-il penser dans ces différents cas?

1° Ursule n'est pas exemple de péché, et de péché grave ; son confesseur a bien fait de lui refuser l'absolution. Car une épouse ne peut être excusée de rendre le devoir à cause des incommodités ordinaires de l'accouchement ou de l'allaitement, ni par des douleurs médiocres, ou même fortes, mais non continues, par exemple des maux de tête pendant plusieurs mois après les couches, ni à cause de l'affaiblissement de sa santé, parce que tout cela fait partie des charges du mariage. Et la femme, par la puissance du

contrat, en livrant son corps dans le but de la génération, a été censée s'obliger à supporter toutes les incommodités qui accompagnent ou suivent la génération.

2° Germaine ne peut être dispensée du devoir conjugal que par le consentement de son mari. La raison en est que la procréation des enfants est le but principal du mariage, et qu'il comprend tous les inconvénients qui ne sont pas extraordinaires. Autrement, la femme pourrait trop facilement et trop souvent décliner le devoir, au grand ennui du mari, et au risque pour lui d'incontinence. Germaine devait penser à ces inconvénients avant de se marier; maintenant elle doit les supporter. Qu'elle se confie à la Providence.

3° Il faut pardonner à Agnès. Une femme réduite à de telles extrémités, n'est pas tenue de rendre le devoir, car son accomplissement ne peut pas être exigé en face d'un grave dommage; car la femme qui se marie n'est pas censée s'obliger à des charges tout à fait extraordinaires, et à risquer sa vie pour obéir a son mari. Mais le plus souvent, il ne faut pas tenir compte des douleurs du premier accouchement, qui sont habituellement très fortes.

4° Il ne faut pas inquiéter Victoire en principe, si ce malheur résulte de quelque vice de constitution qui rende l'accouchement difficile, compromette la vie du fœtus avant qu'il vienne au monde. . . . Mais il faut faire exception, si le refus du devoir doit entraîner des querelles entre les époux.

5° Que répondre à Tècle? En principe elle doit être dispensée de son devoir, parce que l'acte conjugal pratiqué de la sorte est illégitime. Or, un mari ne peut exiger un acte illégitime. Cependant on peut permettre à l'épouse d'accomplir son devoir de la sorte, par quelque motif raisonnable, par exemple, si le refus entraîne des désagréments notables; par exemple, outrage de la part du mari (Saint Liguori).

Cas II.

Obstacle au Devoir Conjugal.

I. Léonie, jeune fille de vingt ans, a prononcé un vœu perpétuel de chasteté. Plusieurs années après, poussée par ses parents,

elle accepte de tout cœur un mariage favorable qui se présente. Mais elle songe à son vœu, et n'ose en parler à personne. Nonobstant, elle se marie; mais alors commence son embarras. Elle se décide à chercher un moyen de se délier de son engagement; mais en attendant, elle est forcée d'accomplir son devoir conjugal, et même, pour plaire à son mari, elle le réclame quelquefois. Enfin, tourmentée par sa conscience, elle va trouver son confesseur et avoue tout.

II. Rosalie, mariée de bonne foi, a bientôt des doutes au sujet de quelque empêchement venant d'une alliance. Elle continue cependant à habiter avec son mari, jusqu'à ce qu'elle soit assurée de la nullité de son mariage. Lorsqu'elle en a la certitude, elle demande à son confesseur ce qu'elle doit faire: "Lui refuser tout commerce, répond celui-ci, jusqu'à ce que vous ayez obtenu une dispense." Mais ce conseil a un résultat déplorable. Rosalie est amenée à accorder le devoir conjugal à son mari furieux; elle est menacée de violences terribles, même de mort, et, pour sortir d'un tel embarras, elle obéit à son mari.

D. 1re. Que doit faire le confesseur dans le premier cas? Doit-il permettre à Léonie de demander et de remplir le devoir conjugal, sur les instances de son mari, jusqu'à ce qu'elle soit dispensée de son vœu?

D. 2e. Rosalie doit-elle remplir le devoir conjugal pour éviter un mauvais traitement ou même un danger de mort?

D. 3e. Peut-elle du moins avoir une attitude passive?

R. à la 1re D. 1° Léonie ne peut demander ni remplir le devoir conjugal pendant les deux premiers mois, depuis la célébration du mariage, si ce temps n'est pas encore écoulé. C'est que, pendant ce temps, les époux, en vertu d'un privilège divin reconnu par l'Eglise, sont dispensés de l'obligation d'accomplir leur devoir conjugal, afin de voir s'ils voudraient embrasser l'état religieux. 2° Léonie peut remplir son devoir après cet espace de temps, pour satisfaire aux droits de son époux; mais elle ne peut le demander jusqu'à ce qu'elle soit dispensée de son vœu, parce qu'elle le violerait. 3° Mais elle doit s'abstenir si l'autre y consent, ou a perdu le droit de l'exiger, par exemple à la suite d'un adultère ou d'un inceste.

R. à la 2e D. Non, absolument; parce que la nullité du mariage étant reconnue, l'acte conjugal serait une fornication, ce qui est un mal intrinsèque, et ce qui n'est jamais permis, même pour éviter la mort. Et peu importe que le mari ignore l'empêchement de bonne foi et pense être dans son droit, parce que le mariage étant nul, il n'a aucun droit, bien qu'il croie en avoir.

R. à la 3e D. Il y a controverse. Ce qui revient à examiner si une femme accablée par la violence doit plutôt se laisser tuer que violer. Il y a deux opinions probables: La première répond non, parce que la femme, en restant passive coopère à un acte mauvais, intrinsèquement. La deuxième répond oui, parce que la femme restant passive, n'agit pas, mais seulement pour un motif très grave, par crainte de la mort, ne fait aucune résistance extérieure et refuse tout consentement intérieur; en laissant faire elle ne coopère pas en principe, mais seulement en fait, et se trouve suffisamment excusée par la crainte de la mort. Mais on doit supposer toujours qu'elle ne court aucun danger de consentir au plaisir charnel.

Objections.— Si la femme peut rester passive d'après cette opinion probable, elle peut simplement accomplir le devoir conjugal, puisque pour la femme c'est rester dans une situation passive.

Je nie la conséquence et la similitude, parce que comme on dit communément, accomplir son devoir n'est pas du tout la même chose que rester passif, car en accomplissant son devoir on coopère à l'acte, puisqu'on donne son consentement à l'acte du mari et qu'on soumet franchement son corps à sa volonté; tandis qu'une femme restant passive, d'après ce qu'on a dit: 1° Ne donne pas son consentement à l'acte du mari; 2° refuse toujours de consentir au plaisir; 3° ne cède qu'à la force, et, seulement à cause d'une crainte très grave, ne fait aucune résistance extérieure.

Cas III.

Obstacle au Devoir Conjugal.

Basilisse, femme pieuse, s'étant mariée, résolut de rester chaste, autant que possible, sans porter atteinte aux droits de son mari. Elle prononce un vœu à ce sujet. Mais ensuite, elle se

demande comment elle peut, et si elle doit, y rester fidèle ; peut-elle se montrer caressante envers son mari et lui fournir ainsi l'occasion de réclamer le devoir conjugal? Mais elle est si attachée à son vœu qu'elle ne veut le rétracter en aucune façon. Hiparque, son mari, prenant le chemin contraire, se souille en secret par l'adultère et même par l'inceste, avec la cousine de sa femme Basilisse.

D. 1re. Comment peut-on perdre le droit de réclamer le devoir conjugal?

D. 2e. Un époux peut-il se lier par le vœu de ne point réclamer ce devoir?

D. 4e. Que penser de ces cas?

R. à la 1re D. On perd le droit de réclamer ce devoir :

1° Par l'adultère. Un époux innocent n'est pas tenu d'accomplir le devoir conjugal envers son conjoint, coupable d'adultère.

2° Par *une alliance* survenant pendant le mariage, c'est-à-dire quand l'un des époux a commis un inceste avec un parent de l'autre, au premier ou au second degré.

3° Par le vœu de chasteté émis soit avant, soit après le mariage.

R. à la 2e D. Il faut distinguer. L'un et l'autre époux ne peuvent séparément émettre le vœu de ne point réclamer le devoir conjugal, simplement, sans restriction, parce que ce vœu pourrait être un jour gênant pour l'autre, et porter atteinte à ses droits. Ainsi le mari qui a l'habitude de réclamer ce devoir comme c'est l'habitude des maris, ne peut émettre le vœu de ne pas le réclamer, parce qu'il créerait un ennui notable à son épouse. L'épouse peut émettre beaucoup plus facilement ce vœu, parce qu'elle n'a pas coutume de le réclamer, ou en ne le réclamant pas ne crée pas d'ennui à son mari. La réponse dépend donc des circonstances seules où se trouvent les gens.*

R. à la 3e D. Le vœu de Basilisse est valable, parce qu'il n'est pas gênant pour son mari et ne porte pas atteinte à ses droits. Elle ne peut donc pas réclamer le devoir conjugal, mais elle doit le rendre jusqu'à ce que son mari perde son droit. D'ailleurs, elle

* Il existe dans plusieurs villes de France des sociétés de femmes qui font de semblables vœux ; les hommes y sont admis du consentement de leurs épouses et prennent le même engagement.

peut se conduire envers son mari comme d'autres femmes honnêtes qui donnent à leurs maris les marques d'affection convenables, et se montrent caressantes pour réchauffer leur affection. Mais lorsque le mari a perdu son droit par l'adultère ou par l'inceste, elle ne peut plus rendre le devoir conjugal ; car elle a fait vœu de garder sa chasteté aussi bien qu'elle le pourrait, sans porter atteinte aux droits de son mari, et en refusant ce devoir elle ne viole aucun droit, puisque le mari n'en a plus. Donc. . . .

Cas IV.

Obstacle au Devoir Conjugal.

I. Narcisse, mari d'Agathe, a commis un triple inceste : 1° avec la sœur d'Agathe, Blandine, un jour qu'il était ivre ; 2° avec la fille de Blandine, qu'il prenait pour une autre, la nuit ; 3° avec Sylvie, sa cousine au second degré. S'étant confessé de ces fautes, il apprend de son confesseur qu'il se trouve dans un triple empêchement pour réclamer le devoir conjugal.

II. Rosalie, femme de Rafin, sous l'impression d'une crainte violente, pèche avec Vulpin frère de son mari. Aussi son confesseur lui signifie un empêchement de réclamer le devoir conjugal, jusqu'à ce qu'il ait reçu une dispense levant cet empêchement.

D. 1re. L'ignorance des lois de l'Eglise ou des personnes est-elle un obstacle à la privation des droits de l'époux ?
D. 2e. *Quid*, d'une crainte violente ?
D. 3e. Que penser des deux cas ?

R. à la 1re D. L'ignorance du fait excuse certainement, lorsqu'on ignore que la personne avec laquelle on pèche est une parente, parce que la privation du droit conjugal est une peine infligée à l'inceste ; où il n'y a pas d'inceste, il ne peut y avoir de peine.

L'opinion plus probable est que l'ignorance du droit excuse, lorsque le pécheur ignore la loi de l'Eglise établissant cette peine : parce que, quand une peine est imposée par une loi humaine, celui qui par ignorance la transgresse est exempté de la peine, comme du péché d'avoir transgressé la loi. Car il faut d'abord manquer à la loi avant de manquer à la peine qu'elle impose. C'est l'opinion plus commune suivie par saint Liguori.

R. à la 2e D. Oui, suivant l'opinion plus probable, bien que la crainte n'excuse pas du péché. C'est qu'une crainte violente exempte de suivre les lois humaines, sans nous exempter de suivre la loi naturelle. Opinion plus commune suivie par saint Liguori, contrairement à d'autres.

R. à la 3e D. Quant à Narcisse, il n'a pas perdu son droit, conjugal dans le premier cas, n'ayant pas péché en principe, comme étant privé de raison ; il ne l'a pas perdu dans le second cas, car il n'a commis l'inceste qu'en fait et non en principe, ignorant que sa complice était cousine de son épouse ; ni dans le troisième cas, parce qu'il n'a pu former une alliance incestueuse en péchant avec sa propre cousine, ce qui n'existe que par le commerce d'un homme avec les cousines de son épouse et *vice versa*.

Quant à Rosalie, elle n'a pas perdú son droit conjugal si elle a subi une violence absolue, comme il est evident, puisque, s'il n'y a pas de péché, il n'y a pas de peine. Même, d'après l'opinion plus probable, elle n'est pas privée du droit d'exiger le devoir conjugal, quoi-qu'ayant péché gravement puisque, par suite d'une crainte violente, elle est censée exemptée de la peine ecclésiastique infligée pour l'inceste, comme on a dit plus haut. Donc le confesseur a eu tort d'empêcher Rosalie de demander le devoir conjugal, jusqu'à ce qu'elle ait obtenu la dispense, car elle n'avait besoin d'aucune dispense.

Cas V.

Instruction Pour les Fiances et les Epoux.

I. Domitille, jeune fille, va se confesser : " Mon père, dit-elle, je vais me marier. J'ignore complétement les obligations du mariage. J'ai entendu dire qu'on y trouvait de grands périls pour notre salut éternel, c'est-à-dire de fréquentes occasions de pécher. Je veux cependant sauver mon âme Veuillez donc, mon père, m'indiquer ce qui est défendu sous peine de péché mortel ou véniel."

II. Venefride, mariée depuis peu de jours ou peu de mois, va se confesser, fort embarrassée au sujet de ce qui est permis ou défendu dans le mariage, et elle demande instamment à en être instruite.

D. 1re. Que répondre à Domitille? Convient-il de l'instruire en détail?

D. 2e. Que faire avec Venefride?

R. à la 1re D. Le confesseur doit procéder avec prudence et de grandes précautions en instruisant Domitille d'une manière générale, sans aborder en rien les détails: il doit éviter de scandaliser sa pénitente, en lui expliquant en détail les devoirs des époux. Voici ce qu'il peut dire: "Le mariage est saint l'Apôtre l'appelle grand dans le Christ et dans l'Eglise, et il faut vivre saintement dans cette liaison sacrée. Tout n'est pas permis dans le mariage, mais seulement ce qui a rapport à son but. En général tu dois obéir à ton mari, à moins que tu ne comprennes clairement qu'il te commande ou te réclame quelque chose de mal. Alors viens vite au tribunal de la pénitence, et si tu te trouves embarrassée, dis-le franchement à ton confesseur."

R. à la 2e D. Il faut user de la même prudence envers Venefride récemment mariée. En général, que le confesseur n'interroge pas, mais réponde d'une manière générale aux demandes de la pénitente, à savoir qu'il est permis aux époux de faire tout ce qui a rapport à la procréation des enfants, mais rien de ce qui s'oppose à cette fin du mariage; qu'il faut tout faire honnêtement, en suivant l'ordre indiqué par la nature. Qu'il ne descende pas aux détails, mais laisse la femme lui exposer ses embarras, si elle en a, qui la tourmentent, et qu'il lui réponde en peu de mots.

Cas VI.

L'Onanisme.

Romaine a un mari impie qui veut non pas procréer d'enfants, mais satisfaire sa passion, et que accomplit toujours le crime affreux d'Onan. Romaine le sait fort bien, et la pieuse femme en est tout affligée. Si elle avertit son mari de l'irrégularité de son acte conjugal, ou si elle lui refuse parce qu'il en abuse, elle est accablée d'outrages et de coups. Craignant d'offenser Dieu, elle ne sait que faire, elle est fort embarrassée. Elle va trouver son confesseur pour lui demander conseil. Peut-elle rendre le devoir, conjugal à son mari lorsqu'il lui demande, peut-elle le demander

sans commettre un crime? Le confesseur affirme que ces deux choses sont criminelles, parce que le crime d'Onan est un mal intrinséque, même de la part de l'épouse qui y coopère. Aussi elle doit souffrir tous les maux, et même la mort plutôt que de se souiller par ce crime. Romaine revient toute triste et, dans sa douleur, souhaite la mort.

D. Que faut-il faire et penser dans ce cas?

R. Il ne faut pas inquiéter Romaine, qui est forcée pour un grave motif d'obéir à son mari, coupable d'Onanisme. Le confesseur a fait une erreur grave en la condamnant pour péché mortel et coopération intrinséquement criminelle. Beaucoup de théologiens l'affirmaient autrefois; mais les derniers, ayant mieux examiné la chose, affirment que la femme ne commet pas un crime intrinsèque en obéissant pour un grave motif à son mari Onaniste. Ce confesseur doit donc changer d'opinion et consoler aussitôt Romaine, de peur qu'elle n'invoque la mort dans son affliction.

Cas VIII.

Onanisme.

Humbert, confesseur, examine les cas suivants:

1° Il est persuadé qu'il est difficile de croire les maris qui promettent de se corriger dans l'usage du mariage, et il leur refuse généralement l'absolution, jusqu'à ce qu'il ait la preuve de leur persévérance après un long espace de temps.

2° Il ne donne l'absolution aux épouses que lorsqu'elles opposent une résistance extérieure et très violente à leur mari coupable d'Onanisme, et lorsqu'elles craignent les plus déplorables suites en refusant le devoir conjugal.

3° Il condamne l'épouse à un péché mortel lorsqu'elle consent avec un plaisir sensible à cet abus du mariage, bien qu'elle ait horreur du péché de son mari et lui témoigne sa répugnance.

4° Il blâme vivement les épouses qui désirent intérieurement ne pas avoir d'enfants, tout en voulant remplir leur devoir conjugal régulièrement, et en ayant horreur du péché.

D. 1re. Peut-on absoudre les maris Onanistes s'ils promettent de se corriger?

D. 2e. Que faire à l'égard de leurs épouses qui ne voudraient pas offenser Dieu, mais voudraient ne pas avoir d'enfants ?

D. 3e. Que penser de la doctrine et de la conduite d'Humbert dans chaque cas ?

R. à la 1re D. Il faut traiter les Onanistes récidivistes comme les autres qui retombent dans les autres péchés. Les règles qu'on a établies pour les autres doivent leur être appliquées. Aussi, s'ils paraissent affligés de leurs péchés et promettent de se corriger, il faut les absoudre.

R. à la 2e D. On trouve beaucoup d'épouses ainsi embarrassées ; elles ont horreur du péché mortel, ne voulant pas encourir la damnation éternelle, mais elles craignent de procréer des enfants. En pratique on demande : 1° qu'elles ne coopèrent au péché du mari par aucun acte positif, par aucune parole, par aucun signe, pas même par des plaintes au sujet de leurs enfants trop nombreux déjà, etc. ; 2° qu'elles manifestent un déplaisir extérieur pour le péché de leur mari. A ces conditions, il ne faut pas les inquiéter au sujet de l'Onanisme, bien qu'elles éprouvent une répugnance, un éloignement notables pour faire des enfants ; car cette répugnance est naturelle, à cause des douleurs de l'enfantement et de la crainte de la mort qui peut résulter de l'enfantement. Et il ne faut pas blâmer les femmes mariées de ce qu'elles ne désirent pas avoir beaucoup d'enfants, puisque ce désir n'est pas criminel par lui-même, pourvu qu'elles ne coopèrent pas au péché de leur mari et ne s'y complaisent pas. Il faut même faire cesser les scrupules des épouses timorées qui craignent de trouver un plaisir intérieur dans la mauvaise action de leur mari, en désirant n'avoirs pas d'enfants ; parce que, comme la plupart du temps elles ont horreur de ce grave péché, elles ne sont pas censées s'y complaire, et il faut les absoudre sans difficulté.

R. à la 3e D. 1er cas. Humbert s'est montré trop sévère pour les maris qui promettent de se corriger ; s'ils trompent le confesseur, c'est leur affaire. Celui-ci doit avoir la conscience tranquille, en principe, du moment qu'ils affirment qu'ils sont affligés de leur péché passé et promettent de se corriger à l'avenir ; on n'a rien de plus à leur demander. Il ne faut pas admettre non plus la conduite d'Humbert au sujet des preuves de persévérance qu'il

demande pour un long espace de temps, parce qu'une rechute ne prouve pas du tout que l'intention n'y était pas, puisque même ceux qui montrent l'intention la plus ferme de ne plus pécher, y retombent.

2e cas. Sa conduite est encore trop sévère, car il n'est pas nécessaire que les épouses manifestent chaque fois leur déplaisir à leur mari ; il suffit de le faire de temps en temps, afin que le mari sache bien que sa manière de faire deplaît à son épouse. Et il n'est pas nécessaire que l'épouse craigne des suites déplorables, en refusant le devoir conjugal ; mais il suffit qu'elle craigne un grave inconvénient quelconque, par exemple, si son mari cessait de lui témoigner des marques d'affection en se montrant fort offensé ; car alors leurs relations deviendraient désagréables et il en résulterait de grands inconvénients pour l'épouse.

3e cas. Humbert se trompe évidemtment. Car l'épouse peut tonjours, dans l'acte conjugal, admettre un plaisir sensible, tout en prévoyant que son mari commettra le péché d'Onan ; car cet acte est en lu-même honnête et permis à la femme, et il suffit qu'elle ne donne pas son consentement au péché de son mari.

4e cas. Nouvelle erreur du confesseur, blâmant les épouses qui souhaitent intérieurement n'avoir pas d'enfants ; car il suffit, comme il a été dit plus haut, qu'elles ne coopèrent par aucun acte positif à l'abus de leurs maris et ne consentent pas à leur péché. Cependant, que ces femmes prennent garde de ne pas avoir trop longtemps ce désir, d'ailleurs permis. Car cette considération fâcheuse trouble parfois leur esprit, et devient périlleuse pour quelques-unes.

Treatise on Censures.

CHAPTER I.

Of Censures in General.

ART. I. Nature, Division, and Conditions of Censures.

I. Of the Nature of Censure.

932.— Censure is a spiritual punishment with the intention of correcting a baptized man, offending and contumacious, by which he is deprived of the use of certain spiritual advantages.

. . . . . .

ART. II. The originator or promulgator of the censure.

. . . . . .

935.— Excommunication against noxious animals, for instance, grasshoppers, is not excommunication properly so called, but an adjuration, in view of their destruction, in order to prevent them from being hurtful.

. . . . . .

ART. III. The one who undergoes the censure.

. . . . . .

ART. IV. Removal of the censure.

. . . . . .

CHAPTER II.

Different Species of Censures.

ART. I. Excommunication.

956.— There is the *major* excommunication, which deprives of

all the blessings of the Church; and the *minor* excommunication, which deprives of certain blessings only.

Among the persons subjected to the major excommunication, some are called tolerated, and the faithful are not obliged to avoid these; others are called non-tolerated, or to be *avoided*, and the faithful must avoid them.*

. . . . . .

959.— . . . There are eight effects from excommunication:

1, Deprivation of the sacraments; 2, deprivation of divine services; 3, deprivation of the suffrages of the Church; 4, deprivation of ecclesiastical burial; 5, deprivation of ecclesiastical jurisdiction; 6, deprivation of benefices; 7, deprivation of communication with justice; 8, deprivation of civil society.

960.— Unless he is excused by an invincible ignorance, or a grave fear, ... an excommunicated person, who is to be avoided, or simply tolerated, sins gravely by receiving the sacraments, because he is violating a grave law of the Church.

. . . . . .

Deprivation of Ecclesiastical Burial.

965.— Ecclesiastical sepulture is that which takes place in a sacred and blessed place, set apart for the burial of the faithful.

An excommunicated person, who is to be avoided, cannot be buried in a sacred place; if he has been put there, his dead body should be exhumed, if it is yet possible to do it, and the blessed place, polluted by such contact, purified. . . .

Deprivation of Communication with Justice.

968.— This is that which has connection with things concerning civil or ecclesiastical justice.

The excommunicated person, who should be avoided, is deprived of his right to acts relating to civil justice. He cannot be judge, lawyer, witness, notary, etc.; neither tutor, curator nor executor. But to-day this disposition of rights is no longer in force in many places.

* We do not judge as homicides those who, burning with zeal for their mother, the Catholic Church, against the excommunicated, slaughter some of them. (Decretals, Part 2, Caus. 23, Ques. 5, Cap. 47.)

With more reason, he is deprived of all communication with ecclesiastical justice. However, he can appeal to the supreme court, and prosecute his appeal. The excommunicated person who is tolerated, is not deprived of communication with justice, but may use it in a valid manner; however, his adversaries can reject him juridicially, by pleading the exception.

Deprivation of Civil Society.

969.—Those civil acts in which one cannot have any relations with an excommunicated person, who ought to be avoided, are contained in a Latin verse:

Os, orare, vale, communis, mensa negatur.

To such are refused: 1, the mouth; in other words, conversation, letters, marks of kindness. 2, prayers; in other words, all communication in divine things; for instance, mass, services. 3, salutations; even quite private. 4, intercourses; or all partnership in trade, habitation, contracts, etc. 5, table; or reciprocal invitations to be a guest at a dinner.

. . . . . .

The excommunicated are . . .

. . . . . .

995.—Those who do violence, under the devil's direction, to ecclesiastics, or religious of both sexes.

996.—Ques. What do we mean by doing violence?

Ans. It is to strike, in a violent manner, either with feet, hands, stick or sword, etc., an ecclesiastic or a religious, or injuring him in such a manner as wounds his person outwardly.

Those are excommunicated who fight a duel, who provoke or accept it, or are even accomplices; likewise, all those who assist and are interested in it, who permit it, or even do not prevent it as much as possible, whatever their *dignity*, even though *royal* or *imperial*.

. . . . . .

998.—Ques. Is a duel a reason of excommunication, which, through agreement, ceases when one of the fighters is wounded?

Ans. Yes; by the Bull of Clement VIII., *illius vices*. . . .

Those are excommunicated who are members of the order of Free Masonry, Carbonari, and other like societies, which plot openly or secretly against the church or the legitimate power; also those who are members of other societies favoring them.

. . . . . .

Those are excommunicated who command the rash violation, or who themselves violate the immunity of the ecclesiastical asylum.

1002.—Ques. What ought be understood by this immunity? and is it obligatory everywhere?

Ans. It consists in this, that certain offenders, protected by canon rights, cannot be expelled violently, in a lawful manner, from a sacred place, especially from churches.

It is beyond doubt that this immunity has not been abolished by the Church; which, on the contrary, maintains it yet by penalties inflicted on transgressors; and it cannot be abolished legitimately by the civil power, inasmuch as this immunity of the church and of ecclesiastics was established and regulated by God, and is sanctioned by Church canons.

Those are excommunicated who violate the monastical claustration.

1004. . . . Ques. Who have the right to enter a monastery?

Ans. The Bishops, in a circumstance outweighing power, pastoral visitation accompanied by several serious persons; 2, regular prelates, once a year, in order to visit them; 3, the ordinary confessor, to administer the sacraments, but clothed in surplice and stole; 4, the ordinary physician, who should have his permission renewed every quarter; 5, workingmen and other indispensable people who cannot do their work outside the monastery.

. . . . . .

Those making a traffic of indulgences, or other divine blessings, are under the ban of excommunication by the Constitution of St. Pius V., *Quam Plenum* (2d of January, 1569.)

1008.—Ques. Ought all those making such a traffic to be excommunicated?

Ans. No. St. Pius V.'s Bull excommunicates only those inferior to bishops; as for bishops, cardinals, etc., they are under the penalty of suspension of right to enter the church and receive the revenues, a penalty which is imposed on them by the Sovereign Pontiff, and from which they cannot be absolved until they have made satisfaction.

. . . . . .

ART. II. Suspension.

1032. Suspension is a censure by which an ecclesiastic is deprived, for a certain time, either partially or wholly, of the use of the power conferred on him by Holy Orders, of his function, or of a benefice.

. . . . . .

APPENDIX OF DEPOSITION AND DEGRADATION.

. . . . . .

ART. III. Interdict.

1051.—Interdict is the censure by which, as punishment for a crime, the use of divine services, certain sacraments, and ecclesiastical burial is forbidden to certain persons and in certain places.

. . . . . .

APPENDIX I. Interdiction of divine things.

1057.—It is prohibiting an ecclesiastic from celebrating divine services, administering sacraments, or giving ecclesiastical burial in certain places.

. . . . . .

APPENDIX II. On ecclesiastical sepulture.

1058.—The bodies of the faithful deceased, ought, according to the precept of the church, to be buried in a holy place, blessed and consecrated, or even in the church. Those who are not members of the church cannot be buried, either in an ecclesiastical manner or in a holy place. Ecclesiastical sepulture must be refused even

to the faithful who have appeared unworthy of it, either because of having forsaken the faith, or having died in a state of contumacy or impenitence; likewise if they have been rebellious children.

. . . . . .

1052.—When one blesses a cemetery, the farthest part should be left unblessed, to serve for the sepulture of children who die unbaptized, for unbelievers who die in a Christian country, and for all those to whom ecclesiastical burial must be refused. It is not absolutely required that this part be separated from the cemetery by a wall, bush, ditch, etc., but it is sufficient that the place should be set off some way or another.

Treatise on Irregularities.

CHAPTER I.

Irregularities in General.

1063.—Irregularity, in its strict meaning, is a canonical impediment, specifying that a person can neither become an ecclesiastic, reach a superior grade, nor exercise the sacred functions conferred on him. . . .

CHAPTER II.

Irregularities in Particular.

ART. I. Irregularities through defects.

There are eight of them: 1, of soul; 2, of body; 3, of birth; 4, of age; 5, of freedom; 6, of sacrament; 7, of kindness; 8, of reputation. . . .

Through Defect of Body.

1071.—This irregularity has two causes: 1, unfitness for the service of Orders; 2, some unbecoming and notable deformity.

Those considered irregularities are:

1. Mutilated persons, who have no use of their hand, thumb or index finger;

2. Blind persons, or shortsighted, not being able to read easily the Missal;

3. Deaf persons, who cannot hear the clerk's voice;

4. Dumb persons, or stutterers, who cannot distinctly pronounce, at least without great difficulty; provoking laughter, or scorn from attendants;

5. Lame persons, who cannot stand up without a cane;

6. Those who are noseless, twisted, flattened or lengthened in an exaggerated manner;

7. The deformed; for instance, those who are hunchbacked.

1072.—Ques. Is a one-eyed man irregular?

Ans. No, if he is deprived only of his right eye, which is less necessary for the celebration of the Mass; providing that no deformity results from it.

Yes, if he is deprived of his left eye, called the canonical eye; because this is necessary for the reading of the Canon of the Mass. . . .

Through Defect of Kindness.

1076.— Irregularities by defect of kindness, are all those coperating, voluntarily, actively, and in an efficacious and near manner, in the death or mutilation of some person; although according to justice, by an action having relation to it.

So are executioners irregulars; also judges, and all participating in judgments.

The following are excepted: 1, constrained witnesses; 2, those who bring accusation for reparation for a wrong or prejudice suffered. . . .

Through Defect of Reputation.

1078.— . . . Ques. Are innocent persons, condemned by false witnesses to ignominious penalties, irregulars?

Ans. Yes; because, by this fact, they are infamous.

Ques. Are executioners' sons irregulars?

Ans. No, in principle. But they must be sent to another diocese, for fear the Church should suffer dishonor from them.

ART. II. Irregularities through defect. . . .

Appendix: On Indulgences and Jubilee.

CHAPTER I.

Indulgences.

. . . . . .

CHAPTER II.

Jubilee.

. . . . . .

Cases on Censures and Irregularities.

These are of little interest. I will quote only two of them, for very diverse reasons, which the reader will easily understand:

Case VII.

Censures.

Religious Claustration.

I. Justine, a nun, moved by thoughtlessness, places herself in the turning box, which is inside the convent; then she let herself ride outside; after this, without leaving the turning box, she went back into the convent.

II. Damaris, a nun, standing on the threshold of the convent door, which is open, puts one of her limbs outside the door. Another time she exposed her head and bust outside the door.

Ques. Have Justine and Damaris incurred excommunication?

Ans. 1, Justine has incurred censure; because she went outside the limits of the convent, as she went into a place where laics could pass by.

2. Damaris has not incurred censure, either in the first or the second cases. She should therefore be exempted from the penalty of excommunication.

Case I.— Irregularities.

Irregularities in General.

Anatole, a child twelve years of age, in order to become the only heir of his parents, chokes his brother, a little child, by putting his own finger into his mouth. Later, having done penance for his crime, he studies to become a priest. Already ordained, he reads that homicide is a cause of irregularity. What will the unhappy man do? He does not know who to ask for advice, and what must

be done? In expectation of being able to consult some theologian, he continues saying mass.

Ques. 1. Can children under age incur irregularity through a fault?

Ques. 2. Did Anatole sin by celebrating mass with a doubt concerning his regularity?

Ans. to Question 1. There is controversy. Some affirm it, with Sanchez; because, by right, no one is excepted but children under seven years of age; many, with Castro Palao excuse from all faults all persons under age, except the one *who strikes a clerk, or violates religious claustration.*

Ans. to Question 2. Probably Anatole is not in the condition of irregularity, because he committed the fault when under age. No matter if it is a question of homicide. . . . Moreover, as has been said, many think that persons under age are free from all penalties, excepting those incurred for having struck a clerk, or forced an entrance into a monastery. . . .

J. G. SETTLER.

Lessons

ON THE

6th Precept of the Decalogue.

Obligations of Spouses and some Questions relative to Marriage.

Extracts from his "Universal Moral Theology, Enlarged by Notes and New Questions."

—BY—

ROUSSELOT,

(Professor of Theology at the great Seminary of Grenoble.)

FOR THE USE OF NEW CONFESSORS AND PUPILS.

NEW EDITION.

GRENOBLE, 1844.

SUR LE SIXIEME PRECEPTE DU DECALOGUE

Sur les Obligations des Epoux

ET SUR

QUELQUES QUESTIONS RELATIVES AU MARIAGE.

CHAPITRE PREMIER

Sur le Sixieme Precepte du Decalogue.

Question I.* Comment sont conçus le sixième et le neuvième précepte du Décalogue, et ce qu'ils défendent.— II. Ce qu'est la chasteté.

Le sixième précepte dit: Tu ne forniqueras pas, le neuvième: Tu ne désireras pas la femme de ton prochain. . . .

" Il y a trois sortes de chasteté : conjugale, viduale, virginale.

" La conjugale défend, en état de mariage, les voluptés illicites de la chair, et ordonne d'user médiocrement des voluptés licites. La *viduale* défend d'user après la dissolution du mariage, tant des licites que des illicites. La *virginale*, chez les personnes qui n'ont jamais éprouvé les voluptés charnelles, en entraîne l'abstinence perpétuelle et générale, tant des licites que des illicites."

La virginité est une vertu spéciale, meilleure et plus excellente que le mariage."

Suit une substantielle dissertation sur les conditions dans lesquelles se perd la virginité : sur la perte réparable, alors qu'elle n'a eu lieu " que par le simple consentement à l'acte vénérien, pourvu que ce consentement soit tel qu'il ne s'en soit pas suivi et n'ait pu s'ensuivre de pollution," et sur la perte irréparable " par pollution,

* J'ai conservé toute l'apparence et la disposition du livre et reproduit toutes les questions posées, alors même que la réponse ne m'a pas paru mériter d'être signalée.

et par tout acte libidineux volontairement sans pollution, commis par celui qui est, en vertu de son âge, capable de sémination."

Puis, cette remarque répugnante, qui prépare aux monstruosités du livre: "Comme les petites filles sont capables de sémination avant l'âge de la puberté, et même dès l'âge de six ans, elles peuvent plutôt perdre irréparablement leur virginité que les garçons" (p. 9). Ceci entraînera des interrogations spéciales, dès l'âge de *six ans!*

ART. I. — De la Luxure en General et des Especes de Luxure Consommee.

Ques. I. Ce qu'est la luxure, et de ses espèces.

"La luxure est un appétit déréglé, ou un usage immodéré des choses vénériennes, c'est-à-dire des voluptés vénériennes.

"Elle est parfaite et consommée, quæ consistit in voluntaria seminis effusione, ou imparfaite, quæ fit sine effusione seminis. On la dit aussi naturelle, lorsque sont conservées toutes les conditions que demande la nature pour la génération de l'homme, ou innaturelle dans le cas contraire."

II. Combien il y a de sortes de délectation dans la luxure ou volupté et délectation.

"Il y a trois sortes de délectation: spirituelle, organique et vénérienne."

Le professeur insiste sur cette dernière "quæ sentitur circa parte veneras, et oritur ex commotione spirituum, seu humorum spermaticorum generationi inservientium." Il la divise de nouveau en légère: "levis est spirituum, seu humorum spermaticorum generationi inservientium commotio quædam levis tantum, ac ex lumbis decisio, adhuc longe distans ab effusione seminis. . . .," et en véhémente: "spirituum spermaticorum commotio fortis et notabilis, quæ in homine sano proximum seminis effundendi periculum continet* . . ."

**Sanchez* sera toujours en ces matières un maître qu'on peut imiter, mais non surpasser. Rousselot paraît fade à côté de cette phrase ardente et émue, où semblent se trahir ensemble et l'expérience et les regrets; "Adeo vehemens in seminis effusione delectatio sentitur, ut illam homines tanquam summum bonum prosequantur, illique, veluti suæ felicitati adhæreant." Et pourtant Rousselot devait s'y connaître!

III. Combien il y a de causes de délectation et d'émotion charnelles.

Il y a deux causes: per se, et per accidens; on pourrait dire directe ou indirecte, celle-ci pouvant être légère ou grave, suivant ses conséquences sur les sens du patient. Ce dernier point est assez difficile à déterminer, car "sic dantur, qui ex solo mulieris aspectu vel tactu, etiam honesto, motus inordinatos experiuntur:" tel était Tartuffe; "alii e contra, qui ex mulieris etiam nudæ conspectu vix commoventur:" telle était Dorine.

IV. Combien il y a d'espèces de luxure naturelle consommée. Quel péché est la simple fornication.

"Il y a sept sortes de luxure naturelle consommée: la simple fornication, le stupre, l'adultère, l'inceste, le rapt, le sacrilège, le proxénetisme.

"La fornication simple est le rapport humain et naturel de deux personnes libres." On la divise en trois sortes: simplement dite, concubinage et prostitution.

Suit une longue dissertation.

V. S'il y a quelque malice particulière dans la fornication: 1° d'un fiancé avec une tierce personne; 2° d'un baptisé avec un non-baptisé; 3° d'un catholique avec un non-catholique; 4° d'un tuteur avec sa pupille; 5° avec un eunuque, un impuissant, une veuve; 6° d'une servante avec son maître.

De cette très instructive étude, et très détaillée, je ne retiens qu'une réponse, qui montre bien le point de vue tout grossier auquel se place le casuiste.

"Copula ab eunucho vel frigido habita specialem continet malitiam, quia, cum semen non habeat, intervenit finis naturalis frustratio."

VI. Comment le confesseur doit se conduire avec les concubines.

VII. Si les prostituées peuvent être tolérées, et s'il est permis de leur louer sa maison.

On peut les tolérer, pour éviter un plus grand mal; on peut leur louer sa maison, si tout le monde leur refuse et que leur absence occasionne un plus grand mal.

VIII. Quel péché est le stupre.

"Stuprum est defloratio virginis invitæ."

Suit la longue description de la valeur de chacun de ces trois mots, définition sans doute pleine d'intérêt pour le "jeune confesseur et disciple :"

"1° Defloratio est virginalis claustri illicita corruptio per primam copulam carnalem ; 2° nomine *virginis* venit omnis persona quæ necdum ullam cum altera copulam habuit, et quidam etiamsi ea se per mollitiem polluisset, aut turpibus desideriis consensisset, vel signaculi virginalis integritatem casu, aut arte violasset, quia nempe his non obstantibus retineri censetur carnis integritas. . . "

IX. Quel péché est le rapt.

Voici une question fort intéressante et fréquemment agitée par les casuistes, à propos de l'aventure de la chaste Suzanne, dont ils blâment presque tous l'excessive susceptibilité.

"D. Que doit faire la femme enlevée pour ne pas pécher devant Dieu ? — R. 1° Résister intérieurement à la jouissance, et ne pas du tout y consentir. . . . 2° Résister extérieurement à l'aggresseur, se défendre des pieds, des mains, des ongles, des dents. . . . en remuant le corps, et même en appelant s'il y a chance de secours. . . .

"Mais elle n'est pas tenue de crier, quand il y a danger pour sa vie ou sa renommée. . . . Cependant, si elle est en péril de consentir, ce qui, selon Billuart, ne manque presque jamais, elle doit alors crier.

"Peut-elle tuer son aggresseur? Settler le nie, avec la plupart, disant que la pudicité est un moindre bien que la vie temporelle et la vie éternelle, lesquelles perdrait l'aggresseur, s'il était tué. . ."

X. Quel péché est l'adultère.

"Il y a trois sortes d'adultères : homme libre avec femme mariée ; homme marié avec femme libre ; homme marié avec femme mariée : d'où adultère simple et adultère double."

Un botaniste n'eût pas fait une meilleure classification.

XI. Quel péché est l'inceste.

XII. Quel péché est le sacrilège.

"Le péché sacrilège de luxure est celui dans lequel une personne sacrée, un lieu sacré, une chose sacrée, est profané. D'où trois sortes de sacrilèges."

Quel besoin de classification! Et chaque sorte se divise à son tour.

Pour la personne sacrée, il faut distinguer. "1° Si la personne sacrée pèche luxurieusement ou désire pécher avec une personne non sacrée, ou pèche avec elle-même, se polluendo, tactus, vel aspectus turpes habendo, etc.—2° Si une personne non sacrée, pèche luxurieusement avec une personne sacrée, ou le désire; 3° Si une personne sacrée pèche luxurieusement, ou désire pécher avec une autre personne également sacrée: le sacrilège est double alors."

Pour le lieu, les distinctions sont plus subtiles encore, et plus étranges surtout. Il faut savoir ce qu'est le lieu sacré, et définir les actes coupables. Pour donner un échantillon des difficultés de la question, je citerai cet exemple: "Violatur ecclesia per effusionem seminis, quæ quidem debet esse voluntaria in se; . . . proinde ecclesia non polluitur per pollutionem nocturnam, etsi voluntariam in sua causa. Nec, si fiat aliquot solum guttarum effusio. . . . Effusio non sufficiens ad violationem templi, sufficit tamen ad sacrilegium:" admirable sujet de réflexions et de dissertations!

La question de la chose sacrée n'est pas moins remarquablement traitée. Le disciple y apprendra qu'il sera sacrilège si "rebus sacris vel alios vel seipsum impudice tangit; si ipsum polluit, dum sacram Eucharistiam circumfert . . . ; si sacris vestibus indutus turpia exterius perpetrat (hæ tamen vestes non ideo benedictionem suam amittunt), etc." Mais s'il "commet quelque turpitude en portant des reliques sacrées, il n'est pas sacrilège, parce qu'il n'a pas l'intention de mépriser les reliques . . . ; si cependant il a employé ces reliques à une fin dépravée," etc., etc.

XIII. I. Quelles sont les espèces de luxure consommée contre la nature. II. Ce que sont mollities et distillatio: pour quoi on les prohibe, et quel péché est mollities.

La réponse à la 1re question énumère: "mollities bestialitas sodomia, et modus coeundi qui generationem impedire queat."

Et quelle admirable précision dans le détail! Ecoutez: "Ordo a natura præscriptus exigit: 1° ut fiat commixtio duorum; 2° ut hi duo sint ejusdem naturæ, seu speciei; 3° ut sint diversis sexus, et

cocant in vase debito; 4° ut coëant eo modo, qui generationem promovere valeat, et non impedire.

Réponse non moins topique et toute expérimentale à la seconde question: "Mollities, vulgo dici solita pollutio, est fluxus, seu effusio seminis humani voluntarie procurata extra copulam et concubitum. Distillatio est fluxus humoris cujusdam medii inter semen et urinam, qui nempe differt ab urina, eo quod sit magis viscosus et glutinosus, vero autem semine, eo quod sit illo minus viscosus et minus mordax. . . . Mollities committi potest tum a maribus tum a femines; a maribus quidem extra vas, a feminis vero tum extra vas, sed raro, tum et communius in ipso vase." *

Suit une page de détails sur les divers moyens de produire mollities et distillatio, sur les circonstances qui peuvent servir d'excuses, sur les moyens de l'arrêter en chemin, etc.

Le professeur fait montre dans cette dissertation, non seulement de science, mais de lettres latines, en citant Martial:

> Ipsam crede tibi naturam dicere verum:
> Istud quod digitis, Pontice, perdis, homo est.

Il n'y fait pas moins preuve d'imagination et de haute expérience: "Liceret tamen in fornicationis actu copulam abrumpere, ex odio et displicentia peccati, quamvis sit necessario tunc semen effundere extra vas." †

XIV. Quand la pollution est censée volontaire dans sa cause; quand et comment elle est coupable.

Il y a quatre règles pour décider sur ces graves questions.

* "Indicium est istius, si scilicet muller sentiat seminis solutionem cum magno voluptatis sensu, quâ completa, passio satiatur (*Billuart*).

Rousselot passe très rapidement sur la pollution chez les femmes. Le R. P. Debreyne le lui reproche et s'écrie: "Est-il étonnant, après cela, de voir tant de jeunes prêtres ignorants sur cette matière?" Aussi, afin de combler cette lacune, il entame une savante dissertation en ces termes: "Tres apud nos masturbationis species vel potius formæ in feminis distinguntur: 1° masturbatio clitorina; 2° vaginalis; 3° uterina." (*Mœchialogie*, p. 65, 1874.)

† Cependant il ne faudrait pas attribuer à Rousselot le mérite de l'invention de cette intéressante espèce. Deux cents ans avant lui, *Diana*, dans son petit, mais succulent livre des *Solutions pratiques*, avait dit: "Qui fornicatur *tenetur se retrahere* ante spermaticum, etsi complex jam seminat: imo etsi ex vi prioris commotionis post retractionem esset futura seminatio." Et il avait montré la raison de main de maître: "Quia omni momento tenetur opus pravum abrumpere." (P. 385).

Dans la quatrième, il est question de la pollution sans vrai péché, parce que "si la cause n'est pas péché par ellemême, et qu'il y ait une raison légitime de nécessité ou d'utilité de s'y livrer, ou d'y persévérer, la pollution qui s'ensuit n'est pas un péché elle-même, bien que prévue pourvu qu'elle ne soit pas voulue."

A ces conditions embrouillées répondent: "le cas des confesseurs" qui n'est pas sans danger, comme on voit; celui de "l'étudiant en matières honteuses;" il en est de même pour "celui qui monte à cheval, qui mange avec modération des mets échauffants, qui regarde ou touche impudiquement une autre personne pour la soigner ou la laver, qui cause honnêtement avec une femme, ou l'embrasse honnêtement suivant la coutume." Quels gaillards susceptibles, et prompts à la tentation.*

XV. I. Si les pollutions nocturnes sont un péché et quel. II. S'il est permis de les désirer et de s'en réjouir. III. Si la distillation est un péché, et quand.

Il faut bien de la souplesse pour se tirer de telles difficultés; mais que ne peut l'habileté? La réponse définitive à la deuxième question est: "Licet, detestando pollutionem, gaudere de felici effectu quem ipsa habuit."

Mais le professeur paraît fort empêché de répondre à la troisième question: "Si fiat præter intentionem et sine commotione spirituum vitalium ac sensuum carnis, aut cum sensu tantum levissimo, non est peccatum; si vero fiat cum commotione spirituum vitalium aut voluntario sensu carnali ac venereo, est peccatum. "Il est difficile de ne pas se déclarer satisfait.

XVI. Si les menstrues des femmes, la pollution, les actes conjugaux, sont des empêchements à la sainte communion.

La réponse à la troisième question est particulièrement intéressante; elle donne des conseils aux femmes sur la grave question de savoir: "An maritas debitum reddere debeant eo die, vel pridie,

* *Sanchez*, le maître, offre encore une ressource que Rousselot ne refuse pas, ressource précieuse, car elle peut servir alors même qu'il y a faute manifeste de la part du patient:

"Ubi pollutio cœpit culpa patientis, si in ipso fluxu præteritæ culpæ eum pœniteat, non tenetur fluxum reprimere quia jam pœnitentia interrupit actionem præteritam, nunc autem solùm patitur." On n'est pas plus accommodant, et il devient vraiment difficile de pécher en cette matière.

quando communicaturæ sunt." Elle tient sagement compte des intentions et des habitudes.

Il est enjoint au confesseur d'expliquer aux femmes ces règles subtiles, et d'exhorter les maris à s'abstenir de l'acte, par respect pour la sacrée communion.

XVII. Quels péchés sont la bestialité, la sodomie, et molli coeundi innaturales.

Définitions savantes; distinction sagace de "sodomia perfecta id est concubitus personarum ejusdem sexus, et imperfecta. . . ." Le sodomiste devra donner à son confesseur maints détails longuement énumérés, et entre autres "an agens fuerit an patiens, . . . quia conditio agentis longe turpior est quam conditio patientis." *

Il ne faut cependant pas être trop curieux: "Qui coïtum habuit

* Les Casuistes sont d'accord sur ce dernier point, et aussi sur ceci: "Gravius est sodomiam habere cum fœmina quam cum mare."

L'abbé *Craisson*, auteur d'un *de Rebus venereis* fort estimé, et publié à Paris en 1870 dans le but, principalement, de corriger les ouvrages antérieurs sur le même sujet, parce que ces ouvrages "ne sont pas suffisamment débarrassés du rigorisme introduit par les jansénistes, et présentent une sévérité qui rend trop difficile la fonction de confesseur." l'abbé Craison, dis-je, fait montre ici de l'imagination la plus raffinée.

Il se demande s'il y a sodomie, "si vir coierit extra vas, v. g. inter crura, brachia aut alias mulieris partes," et consacre un paragraphe spécial à la question de savoir: "An pollutio in ore sit diversæ speciei? Affirmant nonnulli, dit-il, vocantes hoc peccatum *irrumationem*. Probabilius habet S. Liguori, quod sit pollutio cum inchoata fornicatione si vir polluatur in ore fœminæ; si vero pollutur in ore maris, hoc est sodomia proprie dicta."

C'est encore à ce grand saint que revient l'honneur d'avoir découvert pourquoi c'est un péché mortel "si vir immitat pudenda in os fœminæ." La raison est que "ob calorem oris, adest proximum periculum pollutionis." (S. Liguori, t. VI.)

Il y a encore des choses intéressantes, par exemple de savoir "si la sodomie entre parents est un inceste." *Diana*, que nous connaissons déjà, le nialt tout à fait: "Quia ad incestum requiritur coitus in vase debito cum mixtione sanguinis." La dissertation sur ce point est longue et instructive.

Craisson rapporte ensuite les peines édictées par S. Pie V contre les clercs sodomistes et déclare, comme le faisait jadis *Escobar* (V. ci-dessus, p. 131) que pour les encourir, les clercs devront s'en être fréquemment rendus coupables: "celui qui n'a péché qu'une ou deux fois sera excusé" (p. 104). Il convient aussi de rechercher si ces peines s'appliquent aux clercs sodomistes patients, à ceux "qui bestialitatem exercent;" pour les premiers il y a controverse, mais non pour les derniers, que saint Liguori exempte, parce qu'en matière pénale on ne peut pas procéder par analogie.

cum bruto, non tenetur exprimere cejus speciei illud fuerit, *nisi forte adeo turpe sit ac sordidum, ut in ejus congressu sese prodat libido quædam singulariter humanitatem dedecens.* Nec necesse est declarare an congressus factus fuerit in alvo, an vero in alia parte corporis bruti. . . ." Quel dévergondage d'imagination monacale, hantée par des rêveries solitaires! *

Il y a aussi un article pour le "coïtus cum dæmone, qui, en outre de l'horreur de la bestialité, contient une malice particulière, un péché contre la religion, puisque c'est un commerce avec le plus furieux ennemi de Dieu." †

Mais voici qui dépasse toutes choses: "Reperire est etiam mulieres et puellas quæ, cum venerem voluptatem ex minoris bestiæ lingua lambente ceperint aut pollutionem sint expertæ, valde cruciantur, nec illud declarare audent. . . . Expedit igitur prudenter . . . a mulieribus et etiam a puellis, quærere utrum cum bestia aliquid inhoneste egerint, v. g., bestiam in lectum intromittendo seque ab ea lambente tangi procurando." Et la pratique est favorable: "Ita exonerari conscientias non semel experientia docet!"

Remarquez que ce paragraphe est tout moderne, signé Rousselot. Et maintenant, oyez, pères de famille, oyez ce qu'au fond du confessionnal obscur et redouté, dans la chapelle embaumée et silencieuse, un jeune et vigoureux vicaire pourra et devra demander à vos filles, . . . dès l'âge de six ans! ‡

Enfin, pour tirer l'échelle: "Quæritur ad quam speciem pertineat horrendus cum muliere mortua concubitus!" §

* Il y a cependant une sanction pratique à ces monstruosités, s'il faut en croire *Billuart*, qui "non reputat consummatam bestialitatem nisi fiat intra vas bruti, proinde, saltem ut plurimum, *consummari nequit a mulieribus!*"

† Cette même insanité des rapports avec le démon, succube ou incube, est encore gravement étudiée en 1870 dans le livre de *Craisson*, et avec un étrange luxe de détails. (p. 100).

‡ Il faut pourtant rendre à Rousselot cette justice qu'il passe sous silence la "sodomia fœminarum," tant étudiée par les anciens jésuites, et si savamment distinguée par eux du "tribadismus."

§ *Saint Liguori* discute très posément la question de savoir si cette horrible invention doit s'appeler "pollutio, fornicatio, sodomia, aut bestialitas;" et *Billuart* tranche la question en déclarant que cela dépend "secundum varias conditiones quæ concumbens apprehendit in cadavere, et de quibus delectatur."

XVIII. Quel péché est le proxénétisme (lenocinium).

XIX. Comment doivent être interrogés les penitents qui se confessent de quelque péché de luxure consommé.

La tâche n'est pas facile, et les questions scabreuses sont innombrables à poser.

La première est de savoir "utrum ex metu prolis semen effuderit extra vas . . .? Ipsa muliere interrogetur num semen, completa copula, ejicere conata sit?" Et, ne croyez pas que cette curiosité ne puisse servir aux progrès de la science morale. D. Vernier, théologien expérimenté, a remarqué ce fait curieux que les femmes mariées commettent plus souvent ce supplément de faute que les simples "fornicariæ;" et notre auteur s'étonne assez judicieusement de ce résultat.

"Interrogandus, interrogandus," etc.; l'imagination jésuitique met toutes voiles dehors: un mousquetaire s'y pourrait instruire.

Un seul de ces cas est intéressant: "Interrogandus pœnitens an actus sodomiticos exercuerit, quod non raro contingit libidini valde deditis." Les médecins légistes sont unanimement d'un avis opposé, ce qui indique dans la clientèle des confessionnaux et chez les confesseurs eux-mêmes un point de vue tout spécial.

XX. Comment doit se conduire le confesseur avec un pénitent pollutionis consuetudine misere irretitum.

Pour les enfants impubères, mais qu'il y a lieu de soupçonner et cela, dés l'âge de dix ans pour les garçons, et pour les filles même dès l'âge de sept ans, car alors déjà on en trouve qui "voluptatem carnalem venereosque motus sibi per tactus, situm corporis, femorum compressionem, tibiarum extensionem procurant," il faut agir très prudemment, et par des questions progressives, "en procédant du plus connu au moins connu." Voici un exemple de ces interrogations prudentes et progressives, à adresser aux petites filles: "Utrum honesto situ cubent; vestes modeste induant vel exuant; utrum seipsos nudos aspiciant, tangantve; utrum ab aliis aspici se et tangi passi sint; . . . utrum ex tactu proprio vel alieno motus inhonestos et delectationem magnam experti sint; utrum factus sæpius repetiti et diuturni fuerint: utrum, percepta maxima voluptate, motus a seipsis cessaverint et

ipsimet quieverint; . . . utrum madefacti fuerint." Quelle délicate gradation, et quelle discrétion exquise!

Puis viennent les petits garçons, puis les adultes, hommes et femmes, et cela dure pendant quatre pages!

ART. II. Des Especes du Luxure non Consommee, des Consequences, Peines, etc., de la Luxure.

Q. I. 1° Quelles sont les espèces de luxure non consommées. 2° Si les baisers sont des péchés, et quels.

Ces espèces sont les baisers, les regards, les contacts, les paroles, écritures, lectures, compositions, peintures, etc., honteuses, les pensées, désirs, délectations, etc., impures.

Quant aux baisers, quand ils sont libidineux, et comme il est bon de préciser, "sive inter ejusdem, sive inter diversi sexus personas fiant* . . . etiamsi non subsit periculum ulterioris consensûs in copulam."

II. Si les péchés peuvent être commis, quand et de quelle sorte, par les regards, les contacts, les tableaux et statues, les paroles, etc.

Quelle expérience ou quelle érudition! Les cas particuliers s'y comptent par centaines, et quelques-uns bien curieux, et bien dignes de fixer l'attention des jeunes étudiants en théologie! Ils apprendront, par exemple, que "si matres liberos suos in partibus inhonestis tangunt, aut deosculantur ex amore stulto, potius quam obsceno, ut non raro evenit, peccant leviter." Que "graviter peccant qui seipsos in partibus inhonestis tangunt cum delectatione venerea . . .; qui vero id faciunt solum ex levitate, aut causa manu calefaciendi, peccant venialiter. . . . Quod si vero se tangant morose et repetitis vicibus, etiam peccant mortaliter, quamvis non agant ex affectu libidinoso." On voit qu'il n'est pas facile de s'y reconnaître. Ils apprendront encore que "qui animalium ut canis, felis, etc., genitalia aspicit, tangit, fricat, usque ad effusionem seminis, mortaliter peccare videtur. . . . Quod si autem non usque ad seminis effusionem tangantur. . . . non est nisi peccatum leve." Cependant "peccato excusandus

* In pectus, in mamillas, vel more columbarum, linguam in os intromit tendo." (*Bouvier*, dissertatio in sextum Decalogi præceptum).

videtur, qui ea usque ad seminationis effusionem fricat, ut sic eorum naturam et constitutionem melius agnoscat."

Et bein d'autres choses encore qui expliquent l'expérience précoce et quasi-spontanée qu'on a remarquée dans tant d'affaires de correctionnelle et d'assises! Il y en a six pages. *

III. Comme il faut se conduire par rapport aux mouvements qui naissent dans les parties inférieures.

Je renonce ici à la citation trop longue, et à l'analyse impossible.

IV. Quels péchés sont les désirs, les délectations et les pensées.

V. S'il peut y avoir matière peu grave dans la luxure.

VI. Quels péchés sont fils de la luxure.

VII. Quelles peines contre la luxure sont établies par les lois humaines.

VIII. Quelles sont les excitations de la luxure.

IX. Ce qu'on doit dire des spectacles et des livres érotiques.

X. Ce qu'on doit penser des danses.

XI. Quels sont les lieux et les temps où les bals sont particulièrement inconvenants.—Dans quels cas les bals peuvent avoir une fin honnête.

Pour la deuxième question, il est une circonstance qui, puisqu'elle donne une fin honnête à la danse, suffit à elle seule dans presque tous les cas: "4° quand on est invité et qu'on ne peut s'excuser convenablement."

XII. Quand les bals peuvent être permis ou fréquentés

XIII. Ce que doivent spécialement observer par rapport aux danses les confesseurs et les curés.

XIV. Ce qu'il faut penser de la toilette des femmes.

Grave question, et jadis fort agitée par les jésuites, qui y ont

* Et cependant il faut avouer que Rousselot est resté bien au-dessous de *Bouvier* qui invente l'espèce monstrueuse d'un fils "qui pudenda matris suæ libidinose conspexisset!" Et surtout au-dessous de *Burchard*, évêque de Worms, qui me paraît avoir décidément gagné la palme de l'ignominie par cette question qu'il enjoint d'adresser aux pénitentes: "Fecisti quod quædam mulieres facere solent, ut cum filio tuo parvulo fornicationem faceres, ita dico ut filium tuum supra turpitudinem tuam poneres ut sic imitaberis fornicationem?" (Cité par le P. Chiniquy, 1880).

gagné le nom de théologiens mammillaires; notre auteur ne lui consacre que trois pages; mais c'est une quintessence. Le jeune prêtre saura à quelle région commence et finit le péché, "quæ ita nudant pectus ut media ubera nuda appareant, aut quæ tenui adeo velo pectus obtegunt ut ubera adhuc remaneant translucida, peccant mortaliter." Il est fâcheux que le dernier point, qui manque de précision, prête à l'interprétation, et appelle une étude de fait qui peut être périlleuse. Le confesseur débutant est mieux renseigné pour le péché véniel que commettent les jeunes filles "quæ turgentes sibi addunt mammas." Pourquoi mammas seulement? Il y a là une lacune.

XV. Quels remèdes existent contre la luxure en général.

XVI. Quels moyens le curé peut ou doit employer contre elle et ses causes.

Le principal moyen recommandé quand il s'agit des enfants, et recommandé évidemment de bonne foi, est précisément celui qui, de l'aveu unanime des moralistes laïques, est le plus capable de faire naître dans les jeunes imaginations les idées et les désirs dangereux. "Le prêtre, au catéchisme, s'efforcera de saisir des occasions fréquentes d'inspirer l'horreur de ce péché, de mettre devant les yeux des enfants ses débuts, ses progrès, ses suites funestes, d'en citer des exemples tragiques. . . . Il montrera les innombrables manières dont on peut être induit à y tomber; il en décrira les diverses espèces non pas en détail, mais avec une demi-obscurité (sub obscure insinuare), qui ne puisse scandaliser les âmes innocentes. . . ."

Les prédications et, bien mieux, les livres d'éducation et de lecture de la secte portent en effet la marque de cette préoccupation déplorable, et qui souvent se traduit de la manière la plus grossière. Un de mes amis, professeur d'une de nos Facultés de médecine, entrant un jour par hasard dans une église d'une ville du Midi au moment du catéchisme, entendit le vicaire dire aux petites filles: "Il est un autre péché que vous apprendrez à connaître, et qu'on nomme le péché mignon." *

* Il s'agit bien là d'une méthode générale d'enseignement; j'en citerai deux preuves entre mille.

J'ai sous les yeux un cahier d'Instruction religieuse rédigé par un élève

Qu'on se rappelle les affaires toutes récentes de l'abbé Galbin et de l'abbé Régnier, et l'embarras de la magistrature devant cette excitation à la débauche que n'avait pas prévue la loi pénale.*

du collége d'Etain (Meuse); la mention très bien y est fréquemment écrite de la main de l'aumonier.

Aux 6e et 9e commandements, je lis: art. 1er, une définition des péchés de luxure; art. 2e une étude sur la gravité de ces péchés, où sont étudiés successivement les regards, les baisers les attouchements et la délectation. Enfin, la définition fort claire de la fornication, de l'adultère, du sacrilège et de l'inceste. "L'espèce du péché, est-il dit savamment, varie également pour les pensées, les désirs, les regards, les attouchements et les baisers, suivant qu'ils ont lieu avec quelqu'une de ces diverses circonstances." Le pauvre petit garçon qui écrivait ces belles choses avait 13 ans!

Voilà pour les garçons, voici pour les filles: ici le pittoresque se mêle à l'odieux. Je possède une belle carte manuscrite, dessinée non sans grand travail par une jeune fille âgée de 15 ans, élève de l'école communale d'Aresches. Elle a pour titre l'Empire du vice. On y voit le dit empire, confinant aux royaumes, de la Justice et de la Société, enveloppé par les Mers de l'Infamie et de l'Ennui, et l'Océan de la Tristesse, séparé du pays de la Vertu par le détroit des Soupirs, etc.

Il est divisé en sept provinces, qui sont les sept péché capitaux. La Luxure y étale une surface prépondérante; elle est arrosée par une rivière, la fange; son chef-lieu est l'impudicité; elle compte neuf chefslieux d'arrondissement (sic), qui sont: la débauche, la volupté, l'immoralité, l'adultère, l'inceste, la prostitution, le cynisme, le viol, l'impureté, et onze communes, à savoir la séduction, les mauvais désirs, le relâchement, la turpitude, la fornication, la dépravation, les faux plaisirs, l'orgie, la sensualité, l'impudeur, le rapt.

La pauvre jeune fille a dû non seulement bien mettre en place les éléments de cette stupide et ignoble géographie, mais reprendre en un tableau soigné, sur trois colonnes, avec accolades et soins calligraphiques, cette énumération, produit d'une cervelle monacale en délire érotique.

J'ai appris qu'une carte analogue avait été saisie par l'inspecteur d'Académie de Vaucluse.

*Reproduisons ici quelques considérants du jugement du tribunal de la Flèche, acquittant l'abbé Galbin (18 Juin 1879); et aussi quelques-uns de ceux du tribunal d'Auxerre, acquittant l'abbé Régnier (Septembre 1879):

Ce dernier d'abord:

"Attendu qu'il résulte de l'instruction et des débats qu'à différentes reprises, dans le cours des années 1877, 1878 et 1879 au confessional ou dans l'église de Lucy-sur-Yonne, l'abbé Régnier, s'adressant aux petites filles du catéchisme, leur a posé des questions et tenu des propos dont le caractère licencieux ne peut être contesté;

"Que ces questions et propos étaient de nature à surexciter l'imagination de très jeunes enfants, et à developper dans leur esprit des idées malsaines;

"Que cela est d'autant plus regrettable que déjà, en 1873, une instruction judiciaire a relevé à la charge du prévenu des faits absolument analogues."

Et maintenant, l'abbé Galbin:

"Considérant que l'abbé Galbin, dans des conversations particulières, dans sa chambre, dans le jardin du presbytère et dans la sacristie, voulut

CHAPITRE II.

De la Restitution à cause des péchés de luxure, principalement à cause du stupre et de l'adultère.

ART. I. De l'Obligation de Restituer *ex stupro* (p. 78).

Q. I. A quoi est tenu le stuprator.

1° "Celui qui, sans violence, fraude, dol, prière, imposture et promesse de mariage, a défloré une vierge qui consentait librement, n'est tenu à rien envers elle, d'aprés la justice et dans le for intérieur, en principe; parce qu'aucun dommage ne lui a été fait, à elle sachant et voulant."

O séducteurs, quel tranquille maxime! pauvre fille, naïve et amoureuse!

Mais si rien n'est dû à la pauvre fille, il en est autrement pour les parents "s'ils ont connu l'affaire et s'en offensent; car alors il faudra leur donner quelque satisfaction d'honneur pour les apaiser." Le passage mérite d'être rapporté en entier, parce qu'il montre bien avec quel grossier dédain de tout sentiment de pudeur et de dignité humaine les casuistes traitent ces questions, qui touchent à ce qu'il y a de plus délicat pour nous autres laïques: "Plus probablement, le séducteur n'est pas tenu à donner aux parents de l'argent bien qu'ils soient forcés d'augmenter la dot de leur fille pour pouvoir la marier suivant sa condition. Car la fille, en consentant à sa défloration, a consenti en même temps soit à ne pas se marier, soit à se marier au-dessous de sa condition; par suite, ses parents ne sont pas forcés de la marier suivant sa condition, et s'ils le veulent faire, et augmenter sa dot dans ce but, ils le font librement,

d'abord gagner la confiance des enfants: qu'il a reconnu avoir embrassé un certain nombre de petites filles, mais qu'il est démontré que ces caresses, dans la pensée du prêtre, n'avaient rien d'immoral;

"Considérant que, pour prémunir les jeunes filles contre les attentats dont elles pouvaient être l'objet, l'abbé Galbin leur a parlé souvent d'actes contraires à la pudeur, qu'il les a engagées à ne pas se laisser corrompre par les petits garçons, et que, pour mieux se faire comprendre, il a pu indiquer aux enfants, par-dessus leurs vêtements, les parties du corps qu'elles ne devaient pas toucher; mais qu'en somme, dans tous les faits incriminés, il n'existe aucun acte suffisamment caractérisé pour constituer, soit le délit d'attentat aux mœurs, soit le délit d'outrage public à la pudeur."

et ne peuvent par suite rien exiger du séducteur dans ce but. Cela d'autant plus que la fille a pu abuser de son corps sans commettre une injustice envers ses parents, et par suite n'est tenue à rien envers eux, d'après la justice ; donc le séducteur pas davantage, puisqu'il n'est pas le coopérateur d'un acte injuste en soi."

2° " Le séducteur qui, par force, crainte, dol, menaces, prières trop importunes, fausses promesses, mais sans promesse de mariage, a défloré une vierge, . . . doit l'indemniser de son dommage, et indemniser ses parents, en la dotant assez pour qu'elle se marie bien, ou même en l'épousant, si le dommage ne peut être autrement réparé."

3° Celui qui a défloré une vierge. . . . sous promesse de mariage, est tenu en principe (per se loquendo) de l'épouser, que la promesse ait été sincère ou non. . . ."

Voilà qui est bien. Mais Lyonnet, célèbre casuiste, dans son Traité de justitia et jure, publié à Lyon en 1836, déclare que "le séducteur sous promesse sincère de mariage n'est tenu à rien.' 'Et la raisonnement est vraiment admirable : " Il n'est pas tenu en raison d'une fraude, puisqu'il etait de bonne foi ; ni en raison de la promesse, car un contrat sous condition honteuse n'oblige pas, alors même que la condition est remplie." Or, l'autorité de Lyonnet est certes suffisante pour rendre son opinion probable, en telle sorte que le séducteur pourra la suivre s'il y trouve son avantage" (voir ci-dessus, page 33).

Mais, il aura d'autres moyens de se tirer d'affaire. Car il n'est tenu d'épouser qu'en principe, et les exceptions ne lui feront pas faute.

En effet " il ne sera pas tenu d'épouser : 1° Quand il découvre ou s'il survient une cause suffisante pour rompre les fiançailles, comme si la jeune fille s'abandonne à un autre ou si elle est de mœurs corrompues, bien qu'elle se fût donnée pour vierge, ou si elle s'est fait passer pour noble ou pour riche, sans l'être ; 2° Si la promesse était feinte et que ce mensonge ait dû être présumé à cause de l'ambiguité des paroles, ou de la manière de les prononcer, de leur exagération, ou du caractère léger (inconstantiam) du jeune homme, de la grande disparité des conditions ou des richesses connue de la jeune fille, ou d'autres indices semblables.

car elle ne peut imputer sa déception qu'à elle-même. Bien plus: 3 Quand même la jeune fille n'aurait pu être avertie du mensonge, soit qu'elle n'ait pas connu l'inégalité des conditions, soit que le jeune homme ait protesté que cela n'empêcherait pas le mariage, il n'est cependant pas tenu d'épouser s'il doit résulter du mariage des conséquences mauvaises, de graves inconvénients, des scandales, des rixes, des discordes de famille," etc.

Voilà la situation bien facile pour les séducteurs, même sous promesse de mariage.

II. Si le stuprator est tenu de réparer le dommage qu'il a causé, si ayant offert le mariage à celle qu'il a séduite, elle le refuse, ou si, ayant de légitimes raisons de ne pas l'épouser, il refuse de le faire. S'il est tenu d'épouser celle qu'il a séduite sous promesse de mariage s'il a fait vœu de chasteté, ou s'il est au degré prohibé de parenté.

III. A quoi est tenu le stuprator par rapport à l'enfant. A quoi sont tenus les parents qui ont exposé leurs enfants à l'hôpital.

ART. II.

DE L'OBLIGATION DE RESTITUER VENANT L'ADULTERE (p. 85).

Q. I. A quelle restitution sont tenus la femme adultère et son complice.

"S'il n'est pas survenu d'enfant et que la chose soit restée cachée, ils ne sont tenus à rien, sinon à pénitence. S'il n'est pas né d'enfant, mais si le mari apprend le crime, le complice devra demander le pardon du mari en lui offrant une satisfaction honorable (honorariam satisfactionem) ou en donnant d'autres signes de douleur, si le mari est supposé l'exiger.

"S'il est né un enfant, la mère devra le nourrir pendant trois ans, et ensuite le père."

Mais si l'on peut douter justement (!) si l'enfant est du mar ou de l'adultère, celui-ci doit-il quelque chose? Non, disent beaucoup d'auteurs, parce que dans le doute on doit prendre la solution la plus favorable. Saint Liguori trouve cette opinion assez probable, mais le contraire lui semble très probable. Ce qui signifie, en langage de jésuite, qu'on peut faire ce qu'on veut, exiger ce qu'on veut, suivant son intérêt: cela est fort commode.

II. Ce qu'il faut restituer pour le dommage causé par l'adultère.

III. Comment la femme adultère peut et doit s'opposer au préjudice que son enfant causerait à son mari ou à ses héritiers, et comment elle pourra le réparer.

Un des moyens indiqués, et ce n'est pas le moins original, consiste en ce que la femme adultère conseillera à son enfant de rester célibataire, afin qu'après sa mort ses biens retournent aux héritiers légitimes.

CHAPITRE III.

De plusieurs questions relatives au mariage.

ART. I.—DES TROIS EMPECHEMENTS DU MARIAGE; C'EST-A-DIRE DU CRIME, DU RAPT ET DE L'IMPUISSANCE (p. 92).

Q. I. Ce qu'est l'empêchement du crime.

Il résulte de l'adultère ou de l'homicide.

Mais il faut s'entendre:

"Debet adulterium esse non attentatum modo, sed consummatum; videtur tamen sufficere sola vasis penetratio, quia hæc ad adulterium sufficit, et alias per novum seminis extra vas effundendi peccatum facile eluderentur Canones."

Mais les docteurs sont partagés, et Saint Liguori affirme, "nequaquam incurri impedimentum, si vir vere non seminet in vase muliebri." C'est une question à l'étude.

II. Si l'empêchement du crime est reconnu par le Code civil.

III. Ce qu'est l'empêchement venant de l'impuissance.

"L'impuissance est l'incapacité de consommer le mariage, id est habendi copulam perfectam, quæ nempe per se sufficiat ad generationem: vocatur etiam impotentia coëundi, et differt ab impotentia generandi. Porro ad veram copulam, quæ ad generationem sufficiat, requiritur, ut veri nominis semen a viro in vas muliebre immittatur et in hoc recipiatur." Voilà une savante définition, moins savante encore que l'énumération qui suit des causes physiques de l'impuissance, chez l'homme et chez la femme.

Puis vient une série d'ingénieuses distinctions entre l'impuissance naturelle ou accidentelle, absolue ou relative, perpétuelle ou temporaire, antérieure ou postérieure au mariage.

Aux causes physiques, il faut ajouter les maléfices, "per dæmonis artificium," auquel cas l'évêque interviendra.

IV. Si l'empêchement d'impuissance est reconnu par le Code civil.

V. Si la femme est tenue de subir une incision, ut viro fiat apta.

Admirable sujet de méditations pour un célibataire de 20 ans!

Rousselot distingue suivant que l'opération doit ou non être grave. Si elle doit entraîner risque de la vie, le mariage est nul, et après la guérison la femme pourra convoler à d'autres noces.*

VI. Ce qu'est l'empêchement tiré du rapt.

VII. Ce qu'il advient en droit civil de l'empêchement tiré du rapt.

ART. II. Des Obligations des Epoux. (p. 102).

§ I.—De l'obligation des époux relativement à la cohabitation et de la séparation de lit et d'habitation.

I. Quelles sont les obligations des époux.

Elles sont rangées sous six chefs:

1° Cohabitation, communauté de table et de lit.

. . . . . .

6° "Uterque conjux tenetur alteri rationabiliter petenti reddere debitum conjugale, hoc est, corpus suum dare, ad copulam conjugalem."

II. Devoirs spéciaux aux conjoints, touchant la cohabitation et l'entretien.

* *Sanchez* semble très supérieur, car il étudie le droit du mari de faire opérer sa femme, et le devoir par la femme de se laisser opérer.

1° *An possit vir claustrum virginis aliquo instrumento reserare, ut sibi reddatur apta.*

2° *An fœmina virgo vel arcta, ac nupta, teneatur incisionem pati, ut viro aptetur.*

Il distingue deux cas! 1° Quando mulier naturaliter est præ cæteris arcta. 2° Quando arcta non est, sed solum naturale virgineum signaculum congressui virili obstat. (*De Matrimonio*, Lib. VII, Disp. XCIII.)

Et *Diana* fait intervenir ici une distinction des plus lumineuses entre le cas où il y a disproportion entre l'homme et la femme "quia uxor est nimis arcta" et celui où la cause en est "quia vir membrum habet nimis improportionatum." Dans le premier cas, opération obligatoire si elle n'est pas trop dangereuse; dans le second, non.

Entre autres réponses, je relève celle-ci : " 1° Si l'un des conjoints est atteint de maladie contagieuse, l'autre n'est pas tenu de rester avec lui, ou de s'en aller avec lui, quand il y a péril probable d'infection. . . . Cela lui est même interdit s'il y a péril de mort, car il n'a pas le droit de s'exposer ainsi, n'étant pas maître de sa vie." Le texte dit : " Quia non est vitæ suæ domina."

Et remarquez combien cette belle formule promet de dévouement en cas de choléra !

III. Quelles sont les prescriptions du Code civil à l'égard des obligations mutuelles des conjoints.

IV. Si la dissolution du mariage peut jamais avoir lieu, en tant que lien (quoad vinculum).

Jamais, entre catholiques, quand il est consommé ; mais jusque-là il peut l'être, seulement pour entrer en religion. " Ratum dissolvi potest per professionem in religione approbata. . . ."

Mais ici interviennent une foule de précautions sur lesquelles doivent s'exercer l'esprit inventif du casuiste et l'esprit investigateur du confesseur.

" Le conjoint qui veut entrer en religion peut, pendant deux mois, refuser le devoir conjugal à son conjoint, qui se rendrait coupable de péché en insistant (si copulam ei invito extorqueat). Le bimestre accompli, s'il n'entre pas en religion, il doit rendre le devoir ; mais s'il ne le rend pas et veut entrer en religion, il le peut, même malgré son conjoint. S'il y entre, le conjoint attendra qu'il ait fait profession, et alors le mariage étant dissous, il peut convoler à d'autres noces ; mais, s'il quitte après son noviciat, il est tenu de consommer le mariage. . . . Si le conjoint, pendant qu'il délibérait, " copulam extorserit," le mariage est consommé et ne peut plus être dissous ; si l'extorsion a eu lieu après le premier bimestre, il ne peut plus entrer en religion sans l'assentiment du conjoint, parce que désormais il lui doit le devoir conjugal, et qu'en le lui extorquant on ne lui a pas causé de dommage ; mais si l'extorsion a eu lieu pendant le premier bimestre, alors il y a eu dommage, . . . et il peut entrer en religion, le conjoint ne pouvant plus désormais se remarier."

V. Si la dissolution du mariage peut avoir lieu, au point de vue de la cohabitation (quoad torum et cohabitationem).

Elle peut avoir lieu : 1° Pour cause d'adultère " moraliter certum, et consummatum per copulam perfectam," et aussi, car les confesseurs n'oublient jamais ces points que le Code pénal a volontairement passés sous silence, à cause de " sodomia completa exercita cum persona aliena, sive masculo sive femina ; item bestialitas consummata."

2° Par l'entrée en religion.

3° Par la chute en hérésie ou en apostasie.

4° Par la sollicitation au crime, y compris l'hérésie et l'inévitable " congressum sodomiticum."

5° Par les embûches et menaces ; si l'un des conjoints est atteint d'une maladie contagieuse qu'il y ait chance de contracter par la cohabitation."

6° Par les coups, rixes, traitements cruels, etc. . . .

VI. Si pour les causes sus-énoncées la séparation non seulement peut, mais doit avoir lieu.

VII. Si la séparation peut être faite d'autorité privée.

VIII. Si, après la séparation, les époux peuvent changer d'état ; s'ils peuvent ou doivent se réconcilier.

IX. Auprès de qui et aux frais de qui doivent être élevés les enfants.

X. Quelles sont les causes de séparation dans le Code civil.

§ 2.— Des Obligations des Epoux Touchant le Devoir Conjugal.

Q. I. Quelle obligation incombe aux époux de demander et de rendre le devoir conjugal.

Ils ne sont pas tenus en principe à le demander, puisqu'ils peuvent y renoncer ; mais en fait "per accidens" ils peuvent y être tenus par charité. . . . " 1° Lorsque cela est nécessaire pour écarter le péril d'incontinence ; 2° quand il convient de réchauffer l'amour mutuel des époux ; 3° quand l'engendrement est nécessaire à la paix de la famille ou au bien public, comme chez les princes ; 4° quand il est évident que le conjoint le désire, ou souffre d'en être privé, bien que n'osant, par pudeur, le réclamer.

" Si l'un des conjoints réclame sérieusement le devoir conjugal, l'autre est tenu, en justice de le rendre, à moins d'excuse légitime.

Les époux doivent donc prendre garde de se rendre impuissants. . .

" Le conjoint pèche donc gravement qui refuse, même une seule fois, le devoir à son conjoint qui le réclame raisonnablement et sérieusement, . . . et cela, qu'il le demande soit explicitement, soit implicitement, seulement par des caresses et autres signes qui sont connus pour exprimer ce désir, comme cela arrive fréquemment aux femmes qui n'osent le demander autrement."

Suit une longue dissertation, fort instructive, sur ce que doit ou peut faire le conjoint passif, lorsque l'actif est ivre, ou demi-ivre, fou, ou demi-fou, avec ou sans intervalles lucides, ou malade. L'apprenti confesseur y apprendra, entre autres choses intéressantes, que si le mari seul est fou, la femme peut lui rendre et lui réclamer le devoir, mais n'y est pas tenue ; que le mal de dents ne peut servir d'excuse pour refuser le devoir ; qu'on peut le refuser pendant le premier bimestre du mariage ; et aussi s'il est réclamé trop souvent, " comme trois ou quatre fois dans la même nuit ;" que le droit de le réclamer se perd par l'adultère aussi, etc. Admirables sujets à traiter par le menu, avec une jeune femme, au fond d'un confessionnal. Il y en a comme cela cinq pages pleines.

II. Quelles conditions sont exigées pour que l'usage du mariage soit licite, et quelles doivent spécialement être observées relativement à la fin.

Il faut : 1° que les époux ne soient liés par aucun empêchement ; 2° qu'ils se proposent une fin honnête ; 3° " ut servent modum debitum coëundi tùm quoad substantiam, tùm quoad situm, locum et tempus."

III. Quelles conditions sont exigées pour que l'usage soit licite ; et quelles doivent être spécialement observées relativement au mode, à la substance, à la position, au lieu et au temps.

Ici, il faut citer textuellement, et se garder de traduire. Le pauvre jeune séminariste fera bien, suivant la recommandation de Rousselot, de réciter maintes prières à la Vierge !

" 1° Modus debitus quoad substantiam est, quod servetur vas naturale, et semen in illud immitatur ac retineatur ; hicque modus servandus est sub mortali.

Hinc graviter peccant : 1° conjuges actum conjugalem in vase non naturali consummantes, vel inchoantes etiam cum intentione

eum consummandi in vase naturali. 2° Vir seminationem ante copulam inchoando, vel hac habita se retrahendo, antequam seminaverit; probabilius tamen potest sese post seminationem retrahere, non exspectata seminatione mulieris, quia hæc non est ad generationem necessaria. Quod si intendens legitime congredi, ante congressum extra vas præter intentionem seminet ob senium vel uxoris indispositionem, non peccat, quia hoc ex corruptæ naturæ festinatione provenit. 3° Mulier semen receptum ejiciens, vel ejicere enitens, vel copulam abrumpens ante viri seminationem, licet ipsa jam seminaverit. Quod si vir post suam seminationem sese retrahat, et mulier nondum seminaverit, se autem postmodum, attamen sine mora, ad id excitet ac seminet, a peccato excusari solet, quia hæc ejus seminatio censetur esse ejusdem actus conjugalis consummatio.

"2° Situs magis naturalis et ordinarius est, ut jaceant conjuges, et vir mulieri incumbat.*

Hinc graviter peccant conjuges, si stantes rem habeant, vel mulier viro incumbat, aut vir a tergo accedat,† cum periculo, ne semen effundatur, vel a muliere retineri nequeat (rarum tamen est, quod retineri nequeat), vel ne procuretur abortus, aut grave saltem incommodum fetus in utere latentis. Seposito vero omni ejusmodi periculo, peccant venialiter, si id faciant ex voluptate, vel majoris præcisè commoditatis gratia; nullatenus autem, si ejusmodi situm exigat necessitas, vel suadet rationabilis causa, quia, v. g., ordinarium situm non patitur dispositio corporis mulieris gravidæ.‡ . . .

"3° Actus conjugalis exerceri debet in loco profano et secreto.

*S. *Liguori* donne la raison physiologique (physiologie de Jésuite) de ce précepte: "Hic modus est aptior effusioni seminis virilis et receptioni in vas femineum."

† *Craisson* est plus varié: "Si coitus fiat sedendo, stando, de latere, vel præpostere more pecudum, vel si vir sit succubus et mulier incuba, innaturalis est." (p. 155.)

‡ *Sanchez*, Lib. IX., Disp. XVII. Utrum sit culpa lethalis, quotics in actu conjugali, vase naturali omisso, innaturale usurpatur, aut utriusque conjugis semen data opera non simul, vel extra legitimum congressum emittitur: aut ex impotentia supervenienti, extra vas effunditur.

"N° 4.— Quid, si maritus velit sodomiticecopulam inchoare, non animo consummandi, nisi intra vas naturale?

"Qualis culpa sit, si vir volens legitime uxori copulari, quo se excitet, vel majoris voluptatis captandæ gratia inchoet copulam cum ea sodomit-

4° Tempus aptum est tempus nocturnum. . . ." Avec dissertation sur l'état de grossesse, de lactation, de menstrues, la communion, le jeûne, etc.

Est-ce assez immonde? Et quel mari ne frémira à l'idée d'une interrogation devant révéler à un homme tous ces secrets de la couche nuptiale, que les plus cyniques ne s'avoueraient pas á eux-mêmes?

IV. Comment les époux peuvent encore pécher dans l'acte de mariage. Si demander ou rendre le devoir est licite, quand il y a doute sur la validité du mariage, etc.

"Graviter peccat, qui actum conjugalem exercet cum affectu fornicario, ad conjugem nempe accedendi, quamvis non esset conjux; vel cum affectu adulterino ad alienam personam, hanc scilicet optando, aut turpiter dilectam sibi repræsentando; quod si simpliciter ejus pulchritudine delectetur, non est peccatum, periculosa tamen res, et serio dissuadenda."

La seconde question est longuement traitée en trois pages, pleines de tours et détours au milieu des plus subtils détails; on sent que dans chaque cas particulier des séries de questions devront être posées au pénitent pour arriver à la solution. Il faut distinguer soigneusement entre la *petitio* et la *redditio* du devoir, l'une pouvant être licite quand l'autre est défendue. Il faut s'informer "si actus conjugalis exercendus sit modo qui repugnat illius substantiæ, vel in circumstantia actum ipsum vitiante, v. g., in vase indebito," . . . ou bien "si petens agat ex pravo affectu vel

ieam, non animo consummandi, nisi intra vas legitimum, nec cum periculo effusionis extra illud. . . .

"Tactus hic, insta tactuum membri virilis cum manibus, aut uxoris cruribus, reliquisque partibus potest ad copulam conjugalem referri. . . . esset culpa venialis."

Lib. IX., Disp. XVI. An concubitus conjugalis vitiosus sit ratione modi, quando variatur situs, servato tamen vase legitimo.

Modus naturalis is est, si mulier succuba, vir autem incubus sit. Quia modus hic ap ior est effusioni virilis seminis, receptionique in vas fœmineum, ac retentioni; et congruentior est rerum naturæ, cum vir agens, fœmina vero sit patiens. Quamobrem omnis deviatio ab hoc modo adversatur aliqualiter naturæ: eoque magis, quo fini huic situs contrarius est. Undè minor est deviatio, cum conjuges a latere, aut sedendo, standove, conjunguntur: pessima tamen dum præpostere, pecudum more, aut viro succumbente."

On voit une fois de plus que les jésuites d'aujourd'hui n'ont rien changé aux doctrin s, ni au langage, de leurs aînés du xvi" siècle.

intentione," ou encore "si vir debitum petat ex affectu adulterino aut fornicario," et si, dans ce cas, il y a péril d'incontinence : car, suivant la réponse de la femme, le confesseur déclare la *redditio* obligatoire ou non ; ou encore "si conjux soleat semen frustare, v. g., vir sese retrahere ante seminationem, vel uxor semen receptum ejicere," cas graves, dans lesquels il faut distinguer suivant que ces déplorables actes sont habituels ou non, car la solution est différente. Encore intervient ici la considération des inconvénients de santé, d'incontinence, etc., véritable dédale de rêveries malsaines au milieu desquelles il importe que la jeune confesseur ne perde pas le fil délié qui le conduit et ne s'égare pas à regarder trop longtemps en route. Ou encore "si petatur ex affectu aut fine, vel cum circumstantia aut modo venialiter tantum culpabili, v. g., stando, a tergo, attamen citra pollutionis periculum, vel ex sola voluptate." Enfin, tout un paragraphe sur les vieillards et leur impuissance douteuse, dont les préceptes sont une merveille d'application de la méthode expérimentale.

V. S'il est licite de demander et de rendre le devoir, quand les époux sont liés par le vœu de chasteté, d'entrée en religion, de prise des ordres sacrés, ou de non-mariage : 1° si ce vœu a été émis avant le mariage ; 2° s'il l'a été pendant le mariage, mais sans l'assentiment du conjoint ; 3° s'il l'a été avec cet assentiment.

Encore et partout, dans les cinq pages du long développement de ces questions, cet amour des détails périlleux, des distinctions savantes et subtiles, qui devront rendre bien souvent nécessaire l'invocation protectrice à la vierge Deipara.

VI. 1° Ce qu'on doit dire des attouchements obscènes, des regards, des baisers entre époux. 2° An peccet conjugatus, qui in absentia compartis seipsum impudice tangit, vel delectatur de copula habita vel habenda ; 3° An peccent soluti, ipsique adeo sponsi, qui de copula post initum matrimonium habenda, vel vidui qui de copula tempore matrimonii habita delectantur.

Nous retrouvons ici les descriptions immondes de la question III. ; et la gravité en est ici augmentée par ce fait qu'il n'y a pas seulement description d'actes obscènes, mais appréciation de l'intention de ceux qui les commettent.

"Si talia fiant cum proximo pollutionis periculo sive utrique, sive alterutri conjugum imminenti, semper sunt mortaliter peccaminosa, quia pollutio est grave peccatum. . . . Si tales actus ex se ad copulam ordinati sint, et fiant in ordine ad eam nec solius voluptatis causa, culpa vacant, quia licita est copula. . . . Si vero hi actus, etiam ad illam ordinati, ex sola voluptate fiant, sunt peccata venialia. . . . Si conjuges invicem exerceant actus inhonestos, non tamen singulariter infames, sine animo et ordine ad copulam hic et nunc habendam, seposito tamen pollutionis periculo, est peccatum. . . . Quod si tamen inter conjuges exerceantur ejusmodi actus omnino turpes ac singulariter infames, ita ut inter membrum tangens et tactum sit summa disproportio, sunt peccata mortalia, quamvis etiam conjuges intendant eos ordinare ad copulam, ut si maritus membrum virile immittat in os mulieris, vel ejus verenda osculetur, vel propria verenda perfricet circa vas ejus præposterum.* Ratio est. . . .

Cependant, même en ces circonstances extrêmes, tout n'est pas perdu, car "l'opinion contraire a aussi ses défenseurs."

Du reste: "Conjuges non erunt peccati mortalis arguendi, si bona fide asserant se his infamiis non commoveri, nec ad pollutionem excitari. Saltem peccati venialis damnanda non videtur pia uxor quæ ex metu, timiditate, vel servandæ concordiæ causa, hos tactus in se a marito fieri permittit, simulque asserit ex illis aut nullos aut leves tantum carnales motus se experiri."

Pour les deux autres questions, l'auteur répond qu'il y a péché mortel, parce que ces désirs et souvenirs comportent: "1° repræsentationem coitus habendi vel habiti; 2° gandium ex tali repræsentatione actu profluens: igitur coitum apprehendunt ut actum delectabilem."

Mais au moment de quitter ce sujet, cisel'e avec tant d'art et d'amour, le savant professeur s'aperçoit que tous ces crimes et

* Ces ignommies datent de loin: "Quid, si vir intromittat membrum in os fœminæ, vel in vas præposterum, non animo ibi consummandi, vel tangat membro superficiem illius vasis? (*Sanchez*, lib. IX.) Et tous les casuistes les ont recueillies pieusement, tout en y apportant chacun d'ingénieuses variantes. Le même *Sanchez*, à lui seul plus inventif que tous, condamne le mari qui "in actu copulæ immiteret digitum in vas præposterum uxoris." S. Liguori considère qu'il y a là, en effet, des rapports avec la sodomie.

péchés commis entre époux peuvent être des suppléments de crimes pour les relations illicites, ou, comme il dit délicatement, "in coitu extra matrimonium." Aussi, recommande-t-il au confesseur de demander à ses pénitents, lorsqu'ils s'accusent de fornication, "an copulam perfecerint eo modo, quo licita est in matrimonio, an vero in ea admiserint inordinationem in ipso matrimonii usu non permissam" et, dans ce dernier cas, de rechercher "quænam fuerit ea inordinatio." *

Mais écoutez comment après avoir scandalisé les époux, souillé le lien conjugal, traîné au plein jour les secrets de l'alcôve, l'imagination dépravée du casuiste tient en suspicion les chastes élans de l'amour des fiancés, et comment il va, dans ces moments sublimes où tout s'épure, vautrer l'âme innocente de la fiancée dans ses fangeuses dissertations sur "les attouchements, regards et baisers déshonnêtes."

"Les fiancés que se confesseront seront avertis que tout ne leur est pas permis, et il faudra leur exposer particulièrement ce qui leur est gravement interdit." Cependant, pris de quelque pudeur, il ajoute: "S'ils ont vécu chastement jusque-là . . . il suffira d'une indication générale, et de l'ordre donné d'exposer, après le mariage, leurs doutes au confesseur, et d'en implorer une instruction plus étendue: instruction que le confesseur ne devra pas avoir honte de donner, bien qu'avec modestie et prudence." Avec modestie: "an maritus membrum virile, etc.!"

§ 3.—De la manière dont les confesseurs doivent se conduire avec les époux et les fiancés.

Ce paragraphe est tout entier de la main de M. Rousselot. Il est destiné à développer le dernier membre de phrase que nous venons de citer. Voyons comment le professeur de Grenoble, qui écrit en 1844, se sera efforcé de réfréner les ardeurs du zèle questionneur, que toutes les immondices précédentes auront allumé dans les cœurs des "néo-confesseurs et disciples." Aussi bien,

* C'est bien cet ordre de préoccupations qui inspirait *Sanchez*, lorsqu'il se demandait:

"Utrum abusus uxoris contra naturam, sive sodomiæ sive sollus mollitiæ culpam admittendo, sit gravior culpa quam inter solutos, habeat que circumstantiam adulterii necessario confitendam?"

avec quelque prudence on peut, sinon empêcher le mal, du moins dégager sa responsabilité professorale. Voyons donc :

1er Point.— Avec les Epoux.

Q. I. Comment doit se conduire le confesseur : 1° en général ; 2° spécialement avec ceux qui se souillent du crime d'Onanisme.

Voilà déjà qui promet. Le confesseur devra d'abord apprendre à fond, "percalleat," les obligations des époux ci-dessus exposées, et les fera sérieusement pénétrer dans l'esprit "sæpius inculcet," de ses pénitents. Il les interrogera sur leurs violations en matière grave, mais avec prudence et chasteté, "caute et caste." *

Mais quittons ces formules générales, et voyons le cas particulier, pris comme modèle, des questions à adresser aux époux soupçonnés de commettre le crime d' "Onan, le plus exécrable, et dont se souillent très fréquemment les époux, surtout les plus jeunes, non seulement dans les villes, mais aux champs."

Le confesseur mettra tous ses soins à découvrir l'existence de ce vice. Mais de peur de l'enseigner à ceux qu'il veut confesser, il demandera avec adresse, "caute," au pénitent : "s'il n'a aucun remords relativement à l'acte conjugal, s'il craint d'avoir beaucoup d'enfants, s'il se pollue en dehors de l'acte, etc." "Il faudra interroger sur ces points les femmes, qui sont très souvent causes du vice Onanique, dont se souillent leurs maris, et les avertir sérieusement, etc."

Voilà, je pense, qui est adroit, et délicat, et j'espère que ce seul exemple va rassurer nos lecteurs sur la manière dont les jeunes prêtres peuvent faire passer et rendre innocentes dans la pratique ces matières de spéculation périlleuse.

II. Ce que doit faire le confesseur à l'égard de la femme dont le mari est Onaniste.

"Il reste une grande difficulté ; si la femme sait avec certitude que son mari, dédaigneux de ses prières, copulam abrupturum esse, ut semen extra vas fundat, peut-elle en conscience sûre lui rendre le devoir ?"

Il y a là-dessus quatre solutions, et tout les casuistes sont entrés en ligne. C'est que ce point a toujours tenu à cœur aux jésuites.

* Voir la note de la page 547.

Le crime d'Onan, défini comme il vient d'être dit, est en effet extrêmement fréquent. L'aveu obtenu, le confesseur a désormais main mise sur la femme ; il en devient le maître obsolu ; mais cela ne lui suffit pas, il veut l'être du mari, il veut l'avoir, lui aussi, dans sa main, et le tenir par le lien même du mariage, dont il autorisera ou prohibera le nœud.

Aujourd'hui, du reste, la question semble tranchée. La Sacrée Pénitencerie romaine, interrogée par les professeurs du séminaire de Besançon, que tourmentait cet intéressant problème, a répondu. Et il est fort curieux de voir quelle solution elle a consacrée.

Les solutions extrêmes désarmaient le confesseur, tantôt par leur indulgence complète, tantôt par leur sévérité excessive. Rome adopte une réponse intermédiaire, qui pourra servir pour tous les cas, et permettra l'indulgence lorsqu'il n'y aura rien à gagner à la sévérité ; "la femme ne peut ni demander, ni rendre le devoir, à moins d'une raison grave, qui l'excuse d'une coopération négative et matérielle dans le péché de son mari." Quant aux raisons graves, il n'y a que l'embarras du choix, ne fût-ce que la crainte de voir le mari "blasphémer Dieu, la religion, injurier les confesseurs et les prêtres, etc."

III. Quels avertissements et renseignements le confesseur doit en outre donner aux époux.

Je ne trouve à signaler d'intéressant sur ce chapitre que cette formule générale du moraliste : "Il y a lieu de s'étonner de la sagacité des enfants même d'un âge tendre, en matière de luxure."

Pauvres petits ! Cœurs purs et âmes candides, nous le savons, nous, pères de famille ! Qui leur excite et leur pervertit l'imagination, sinon ces livres idiots ou obscènes où il n'est question que de saintes vouant au Seigneur leur virginité dès l'âge de six ans, résistant au mariage afin de conserver leur chasteté, se faisant enfermer dans des lupanars, et en sortant plus vierges que jamais ; sinon ces livres où on les invite à méditer, en les aidant par des descriptions coloriées, sur la circoncision, l'incarnation, la conception immaculée, la situation de Jésus dans le sein de sa mère ; sinon ces cantiques aux mystiques éjaculations,* que toute mère

*Je prendrai comme unique exemple la prètendue prière suivante, qui termine un volume dû à l'un des écrivains religieux actuels les plus en

de famille jetterait avec horreur, si quelque plaisant y subtituait Arthur à Jésus? Pauvres enfants! que ces célibataires veulent instruire, et qu'ils poursuivent sans cesse de leurs honteux soupçons, et de leurs suggestions lubriques! N'est-ce-pas notre Rousselot lui-même qui, dans ce manuel que j'analyse le dégoût aux lèvres, s'enquiert à quel âge les petites filles peuvent perdre irréparablement, c'est-à-dire "par un acte libidineux volontaire" leur virginité, et le fixe dès six ans. "Cum sint capaces seminationis . . . etiam in sexto ætatis anno"? C'est sans doute aussi l'âge auquel le confesseur peut leur poser l'immonde question: "Utrum cum bestia aliquid inhoneste egerint, v. g., bestiam in lectum intromittendo, seque ab eâ lambente tangi procurando? (*V.* ci-dessus, p. 518)."

vogue, au confident de saint Joseph, le R.-P. Huguet: "Les perles de saint François de Sales." Lyon-Paris, 1865 (F. Girard éd.) Elle est intitulée "Vive Jésus!" et n'occupe pas moins de 11 pages.

AUX CHERES FILLES DE SAINTE MARIE, ETC.

Vive Jésus, vive sa loi!
Vive Jésus, ma douce vie;
Vive Jésus, ma seule amie;
Vive Jésus, de qui l'amour
Me va consumant nuit et jour;
. . . . . .
Vivent ses liens précieux,
Qui tiennent mon cœur amoureux;
Vive Jésus et son empire,
Vive la douceur qu'il m'inspire;
Vive Jésus, vivent ses traits,
Vivent ses aimables attraits.
. . . . . .
Vive Jésus qui me possède,
Et donne à mes maux le remède;
. . . . . .
Vive Jésus, vive sa force,
Vive son agréable amorce;
. . . . . .
Vive Jésus en ma poitrine,
Vive son image divine;
Vive Jésus en tous mes pas,
Vivent ses amoureux appas;
. . . . . .
Vive Jésus quand nuit et jour,
Il me remplit de son amour;
. . . . . .

POINT 2ᵉ: AVEC LES FIANCES.

Q. I. Combien de fois et comment les futurs époux doivent être entendus en confession avant le mariage.

Quand ils doivent être absous.

La confession doit être répétée trois fois. "Le confesseur ne devra parler de ce qui touche au devoir conjugal qu'à la dernière confession, qui précède immédiatement les noces."

II. Quand et comment ils doivent être avertis d'un empêchement caché découvert par la confession.

III. Comment les fiancés doivent être instruits du but du mariage."

Vive Jésus quand il m'enivre
D'une douceur qui me fait vivre;
. . . . . .
Vive Jésus, lorsque sa bouche,
D'un baiser amoureux me touche;
. . . . . .
Vive Jésus, quand son œillade
Me rend heureusement malade;
. . . . . .
Vive Jésus, lorsque, pâmée,
Je me trouve en lui transformée;
Vive Jésus, quand ses rigueurs,
Réduisent mon âme en langueur;
Vive Jésus, quand il m'attire
Si fort, qu'il semble que j'expire;
Vive Jésus, quand le tourment,
Me fait perdre le sentiment;
Vive Jésus, quand tout à l'aise,
Il me permet queje le baise ;
. . . . . .
Vive Jésus, quand il m'appelle,
Ma sœur, ma colombe, ma belle;
. . . . . .
Vive Jésus, quand sa bonté,
Me réduit dans la nudité;
Vive Jésus, quand ses blandices,
Me comblent de chastes délices;
. . . . . .
Enfin vive et règne toujours,
Jésus l'objet de nos amours!

Et combien d'autres, encore moins présentables, et souvent odieusement grossiers!

"Dans la dernière confession avant le mariage, les fiancés doivent être instruits du but du mariage."

Suit une série de préceptes fort sages sur les précautions à prendre avec ceux qui ont bien vécu jusque-là. Mais bientôt le naturel, ou mieux l'habitude, l'emporte, et les questions ou plutôt les enseignements périlleux commencent.

Le confesseur parle à la jeune fiancée:

"Le but du mariage est la génération et la multiplication des créatures. . . . Pour y arriver, bien des choses te seront permises qui t'ont été jusqu'ici interdites et qui t'ont fait horreur, ô chaste jeune fille; d'autres seront toujours illicites. Pour les distinguer les unes des autres, je vais t'indiquer trois caractères: Tout ce qui tend à la fin voulue par le Créateur, c'est-à-dire à la génération des enfants, te sera permis avec ton mari, et tu y coopéreras licitement. Tout ce qui est contre cette fin, c'est-à-dire contre la génération, est illicite et défendu sous péché mortel. Tout ce qui n'est ni favorable ni défavorable à cette fin, comme les embrassements, les baisers, les familiarités, etc., . . . ou bien est péché véniel, si cela est fait uniquement par sensualité, ou bien n'est pas péché, s'il provient d'amour honnête et licite entre époux. Confie donc à ta mémoire ces trois mots: pour la fin, permis; contre la fin, péché mortel; ni pour ni contre, véniel ou non péché. Veux-tu me répéter cette explication, pour que je sache si tu l'as bien comprise?

"Je veux maintenant t'avertir d'une chose encore: Dans la confession prochaine et dans les suivantes, tu ne rougiras pas de me questionner sur ce que tu n'aurais pas bien compris aujourd'hui, ou sur les doutes qui te seraient survenus, ou sur tout ce qui te troublerait ou te chagrinerait. Et si tu obéis à mes conseils, tu auras le bonheur en mariage, la sainteté dans la vie, la prédestination à la mort, la béatitude au ciel."

Ainsi, tu croyais ô jeune époux, que ta chaste fiancée ne devait recevoir que de sa mère les instructions suprêmes. Apprends que c'est l'homme du confessionnal, le célibataire, qui les lui donnera, et qu'il s'arrangera de manière à savoir dans quelques jours ce que tu veux cacher à tous, ce dont tu n'oserais parler même à ta nouvelle épouse; car dorénavant l'alcôve nuptiale n'aura pas de rideaux pour lui. Et toutes ses précautions sont prises:

"Le confesseur ne devra pas renvoyer les fiancés pour ces instructions à leur père ou à leur mère ; car ou bien ceux-ci n'oseraient les interroger, ou bien ils seraient mal instruits par des maîtres mal intruits eux-mêmes "à malè edoctis malè edocebuntur."

CHAPITRE IV.

De l'avortement et de l'embryologie sacrée.

ART. I.—De l'Avortement.

Q. I. Ce qu'est l'avortement et s'il est permis de le procurer.

Il n'y a rien à reprocher aux solutions données dans la première partie de l'article. Cependant, on ne peut s'empêcher de remarquer avec quelle sécheresse d'âme sont traitées ces matières. Aucun appel à un sentiment généreux, à l'amour maternel. La femme est traitée exclusivement comme une machine à fabriquer l'homme, machine qui n'a pas le droit de s'arrêter dans sa fabrication. Pas davantage d'idées générales, tirées du bien de l'Etat et de la société.

Je relève en outre, des maximes singulièrement dangereuses en pratique : "Si une jeune fille enceinte se montre absolument déterminée à détruire elle et son fruit, et ne puisse en être détournée autrement, il est permis de lui conseiller de détruire le fœtus seul, et de se conserver vivante."

II. S'il y a des peines et ce qu'elles sont, contre l'avortement, en droit canonique.

"Relativement à l'avortement d'un fœtus non animé, il n'y a dans le droit canon aucune peine, pas plus que contre la stérilité procurée."

Génin,* qui cite ce passage, le commente fort sagement par ces paroles : "La cour d'assises a plus d'une fois constaté que des prêtres traduits devant elle pour attentat aux mœurs avaient fait avorter leurs maîtresses ; n'est-il pas possible de penser que les malheureux s'autorisaient peut-être en conscience de leur cours de théologie morale?"

Quant à l'époque de l'animation du fœtus, rien de moins précis, en telle sorte qu'on peut avoir jusqu'au quatre-vingtième jour à ne

* Ses Jesuites et l'Université—Paris 1844.

pas pécher, s'il s'agit d'un fœtus femelle, car pour un mâle, on n'a que jusqu'au quarantième.

III. Quelles peines frappent l'avortement, d'après le droit civil.

IV. Comment le confesseur doit interroger en cas d'avortement.

ART. II.—EMBRYOLOGIE SACREE.

C'est une science qui "traite de l'octroi du baptême aux fœtus arrivés prématurément au monde, à ceux qui sont encore dans le sein de leur mère, ou à ceux qui ne peuvent naître naturellement, question de la plus haute importance, car il est de foi que le baptême est nécessaire au salut de tout être possédant une âme raisonnable."

Q. I. De ceux qui peuvent être baptisés, et particulièrement si les enfants qui n'ont pas encore vu le jour peuvent être baptisés.

Réponse: "Nul ne peut être baptisé quand il est renfermé dans l'utérus maternel." Mais si l'enfant a passé la tête ou un membre, ou si l'on peut lui porter de l'eau soit avec la main, soit avec un instrument, on doit le baptiser.

II. Si le fœtus venu prématurément au monde peut être baptisé.

Oui, "s'il a déjà la figure et les premiers linéaments du corps humain." Mais il y a toujours là de grands embarras: à quelle époque de la vie intrà-utérine l'âme descend-elle s'incarner dans la chair fœtale?

III. Si les fœtus qui ne donnent aucun signe de vie peuvent être baptisés.

IV. Si le fœtus ne peut venir au monde, est-il permis de faire l'opération dite césarienne?

La réponse peut se résumer par ces deux propositions: 1° Si la mère est morte, il faut faire l'opération. La loi l'ordonne ainsi dans le royaume de Naples et de Sicile, même pour les femmes enceintes depuis peu de jours; et cela est très bien, parce qu'on n'est pas sûr de l'époque où le fœtus est animé et a besoin du

baptême. 2° Il le faut aussi, alors qu'elle vit encore, s'il n'est pas moralement sûr que l'opération la tuera.

V. S'il faut et si l'on peut baptiser les monstres.*

Oui, avec des réserves prudentes.

Signalons une espèce intéressante: "Un monstre étant né de la bestialité et ayant apparence humaine, on le baptisera s'il est le produit d'un homme et d'une bête, mais s'il provient d'une femme et d'une bête, il ne faut pas le baptiser. C'est que dans le premier cas, mais non dans le second, il peut être homme descendant naturellement d'Adam."

En dehors de l'absurdité de l'hypothèse, il est curieux de retrouver ici toujours le mépris de la femme, qui ne peut communiquer seule à son fruit la qualité humaine.

VI. Si les enfants exposés doivent être baptisés.

Jusqu'ici, ces questions n'ont qu'une valeur théologique, mais voici qui est plus sérieux et entre dans le domaine des faits.

VII. Quel est le devoir des curés et des confesseurs relativement au baptême du fœtus, aux avortements, à l'opération césarienne.

"Ils devront enseigner aux femmes, aux accoucheuses, etc., qu'il est de leur devoir strict d'ouvrir la femme enceinte aussitôt, après sa mort, pour baptiser l'enfant qu'on en tirera le plus souvent en vie.* . . .

"Ils devront même apprendre à faire l'opération césarienne, pour pouvoir l'enseigner si l'occasion s'en présente."

Suit le manuel opératoire: "Avec un scalpel ou un rasoir, sur la partie la plus proéminente du ventre, etc. . . ."

Peuvent-ils faire eux-mêmes l'opération? Tous les casuistes répondent affirmativement, mais Rousselot ne s'avance pas autant.

**Craisson* rapporte ici une amusante preuve de l'incroyable ignorance de ces dissertateurs en matière embryologique: "Un enfant naquit sous la forme d'un poisson; une servante, qui avait été chargée de faire disparaître un tel monstre, eut l'inspiration heureuse d'ouvrir l'enveloppe poissonneuse, qui lui fit découvrir un très bel enfant, plein de vie, qui put être baptisé, et qui devint plus tard un docteur illustre." (p. 191).

* A défaut de médecin et de sage femme, "toute personne peut et même doit faire cette opération, si elle n'est pas tout à fait incapable." (*Craisson*, p. 205) et l'opération devra être faite "en hâte, aussitôt la mort constatée." Mais constatée comment, et par qui?

"On devra, dit-il, se conduire d'après les ordres de l'évêque, qui déterminera comment cette obligation peut s'accorder avec les lois actuelles et les mœurs."

Et maintenant, que tous ceux qui se sont tant indignés aux récits récents (1878) de la femme de Champoly (Loire) éventrée par le charcutier du village, et de celle de Néaulphe-sous-Essai Orne ouverte avec un canif par une voisine aussitôt après la mort, dans les deux cas sur l'ordre du curé, se taisent et comprennent! Leur indignation prouve d'abord leur ignorance: mais elle prouve encore, hélas! que la dureté des temps et l'incrédulité du siècle ont rendu fort rare, et par suite fort remarquée, l'exécution d'une loi canonique.

Ce qu'il y a de plus intéressant dans tout ceci, c'est que la préoccupation de sauver la vie soit à la mère, soit à l'enfant, n'entre pour rien dans l'esprit des casuistes. On devra ouvrir le ventre, alors que l'enfant ne sera certainement pas viable; il suffit qu'il puisse être vivant.*

Appendice (p. 168).—Des Clercs Coupables de Turpitudes en Péchant Contre la Chastete.

Chapitre prudent, et qui doit être considéré comme la morale de ce livre, si instructif en ces matières, pour les néo-confesseurs et les disciples.†

* C'est qu'en effet il n'y a d'intéressant que le salut éternel de l'enfant. Cette préoccupation dominante s'est manifestée l'année dernière dans des conditions extrêmememt dramatiques. La cour d'assises du Calvados a condamné deux femmes, la mère et la fille, qui avaient tué le nouveau-né de celle-ci; auparavant, ces deux ferventes catholiques avaient eu le soin de le baptiser, afin qu'il pût devenir un ange.

† Voir à ce propos le tout récent et très curieux livre du P. Chiniquy: Le prêtre, la femme et le confessionnal. Paris, 1880.

NOTE SE RAPPORTANT A LA PAGE 538.

1. Je cite ici, pour montrer que ces odieuses pratiques ne sont pas spéciales à Rousselot, un extrait d'un autre livre du même genre, les *Instructions pratiques sur le mariage*, par M. l'abbé Rabkyrolle. vicaire général, official de M. l'Evêque de Mende.—Ouvrage publié avec l'approbation de l'Evêque de Mende; enseigné au Grand-Séminaire de Mende. Toulouse, 1843.

DEUXIEME PARTIE.

Devoirs des époux.

. . . . . .

"Commes les personnes mariées se déterminent difficilement à faire part au confesseur des péchés qu'elles commettent contre la sainteté du mariage, il, suit qu'un confesseur qui *par une pudeur mal entendue*, prendrait le parti de ne faire aucune interrogation sur cette matière, serait cause que plusieurs de ses pénitents croupiraient toute leur vie dans une foule de péchés, qu'ils tâchent même de se dissimuler, cherchant à se persuader que le mariage donne droit à plusieurs actions que la loi de Dieu condamne."

Si chaque mari d'une femme dévote interrogeait sa femme sur ce point, et en obtenait l'aveu de la vérité, on verrait d'etranges scènes!

Appendix.

Propositions Condemned by Innocent XI., on the 16th of March, 1679.

It is hardly possible to have a full idea of the height of cynicism the Jesuitical doctrine had attained in the old time, without having read the sixty-five propositions condemned by Innocent XI., all of them supported by the old Jesuit casuists. The reader has been able to judge, in a great number of particular cases, of the mighty efforts of imagination the modern Jesuits have made to preserve the benefit of these easy and convenient doctrines, while avoiding open contradiction of the Papal interdiction.

Here are those propositions, several of them being merely of a theological nature, seemingly not of much interest in our day; besides these are others, which belong to general morals, and which do not need any explanation.

1. It is not incorrect for the collation of sacraments to follow a probable opinion on the value of the administered sacrament, putting aside a more positive opinion, in case it is not forbidden by a law or regulation, or there is not a grave prejudice to be feared. This is why only the collation of baptism, of the sacerdotal, or of the episcopal order must not be made, according to a probable opinion.

2. I presume, with probability, that a judge may give sentence after a least probable opinion.

3. In general, as long as we take for guidance a probability, either intrinsic or extrinsic, however slight it may be, providing we do not go beyond the limits of that probability, we act always with prudence.

4. The infidel will be forgiven for his lack of faith, if his incredulity is caused through his following a less probable opinion.

5. He who performs but one act of love towards God in his whole life, is he in a state of mortal sin? We dare not condemn him.

6. It is probable that the precept of love towards God does not oblige strictly by itself to do so every five years.

7. There is obligation only when we are compelled to justify ourselves, there being no other possible means of justification.

8. Eating and drinking to satiety, for the alone pleasure of eating and drinking, is not a sin, so long as health does not suffer from it; because natural appetite may legitimately take enjoyment from those acts proper to its nature.

9. The matrimonial act, practiced in view of pleasure alone, is entirely free from sin, even venial.

10. We are under no obligation to love our neighbor by any inward and earnest acts.

11. We may fulfill the precept of love to our neighbor, by mere outward acts.

12. There is scarcely any obligation to give alms, as we are held to give away only the superfluous part of our fortune. The reason is, that rich persons, and even kings, have seldom any superfluous fortune to dispose of.

13. Keeping the required moderation, you can, without mortal sin, feel grieved about the life of a person, rejoice at his natural death, wish it, hope for it, with an *inefficacious* desire, not through hate for that person, but in view of a material advantage resulting to yourself.

14. It is allowed to wish, with an *absolute* desire, for the death of your father, not as an evil for him, but as an advantage to the wisher; for instance, if a large inheritance is to result from that death.

15. It is permitted to a son, who has killed his father while in a state of drunkenness, to rejoice at his death, when a considerable inheritance results from his murder.

16. Faith is not to be regarded as lying under the regulation of a special and particular precept.

17. One act of faith is sufficient in a life-time.

18. I approve that when answering the questions of a public

officer, a man confess openly his faith, as it is a praise-offering to God and faith; but silence does not seem to me condemnable as being in itself a cause of sin.

19. The will cannot make the assent given to faith have in itself more strength than the value of the reasons by which such assent is determined.

20. It follows from this, that one may prudently throw aside an assent which has been considered supernatural.

21. The supernatural assent, needed for the salvation which is granted to faith, is consistent with a merely probable knowledge of revelation, and also with the idea of those fearing that God may not have spoken.

22. The belief in a sole God is the only point which seems to require a certain limit; but it is different when there exists an earnest belief in a future judgment.

23. Faith, in a large sense, based on the testimony of creatures, or some such motive, is sufficient for justification.

24. To invoke God as a witness for a slight lie is not such a great irreverence as that a man should be condemned for it.

25. It is allowed to take an oath when there is a certain reason for it, without having the inward intention to swear, whether the matter be light or grave.

26. If alone, or in presence of witnesses, to answer a question of one's own accord, for a joke or for any other reason, one swears he has not done what has been really done, inwardly thinking of something else which has not been done, or of different means than those actually used, one does not lie, and is not a perjurer.

27. A person has always a just reason to make use of such equivocations when it is necessary or useful for personal safety, the preservation of honor or fortune, or for any other act of such a nature that dissimulation of the truth may then be considered as advantageous and worthy of our zeal.

28. Any one on whom has been conferred a magistracy or office by means of a reference or a present, may, with mental restriction, take the oath required by the king for such functions, without taking into consideration the intention of the person to whom the oath is made, because he is not compelled to confess a hidden crime.

29. A pressing and grave fear is a just motive for seeming to administer a sacrament.

30. An honorable man is allowed to kill the offender trying to ruin his character, if the injury cannot be repaired in any other way; the same may be said if receiving a slap in the face, or a blow with a stick, when the assaulter runs away after having committed the offence.

31. Rightly, I can kill a thief, for the preservation of a single dollar.

32. Manslaughter is not only allowed to preserve what we actually possess, but also anything to which we have positive right and which we hope to possess.

33. The same means may be used, either by the heir or testator, when unjustly prevented from getting an inheritance or receiving a legacy; the same may be said of any one when unjustly prevented from getting possession of a seat or an advantageous situation.

34. Abortion is allowed before the animation of the fœtus, to save the life or reputation of a young girl who is pregnant.

35. It is probable that every fœtus (as long as it remains in the uterus), lacks a reasonable soul, and that the soul takes possession at the time of birth; consequently, it may be said that no homicide is committed by the act of abortion.

36. Theft is allowed in a case of extreme necessity, or great need only.

37. Servants may steal secretly from their masters what they deem a compensation for extra work not sufficiently rewarded by their wages.

38. One is not obliged, under penalty of mortal sin, to restore what has been stolen in successive small thefts, whatever may be the amount of the total sum thus stolen.

39. Any one who advises or induces another to cause a grave prejudice to a third party, is not under obligation to compensate the latter for the damage.

40. A usurious contract is lawful, even when made without an intermediary, and with a contract concluded in advance authorizing another sale, with the intention of getting an extra profit.

41. As ready cash is better than money in prospect, and as every one prefers the former to the latter, the creditor may exact from his debtor more than the capital, and, on the strength of this argument be excused of usury.

42. It is not usury when more than the capital is exacted, not as a mark of kindness and gratitude, but only in the name of justice.

43. How could it be otherwise that, when making false statements to destroy a great authority who does you harm, you should be free even from venial sin?

44. It is probable that mortal sin is not committed when one falsely accuses a person to protect his rights and honor. And if this is not probable, there should be, so to speak, no probable opinion in theology.

45. To give temporal goods for spiritual, when the former is not meant to be a price paid for the latter, is not simony, but only a reason to confer or produce the spiritual; or even when the temporal would be but a gratuitous compensation for the spiritual, and *vice versa*.

46. The same may be said when the temporal is looked upon as the principal motive to decide upon the donation of the spiritual, or even as the aim of the spiritual, so far as leading one to estimate the former as worth more than the spiritual.

47. When the Council of Trent says that one has fallen into a state of mortal sin by communicating of the sins of others, if one confers ecclesiastical dignities on other persons than those judged more worthy and useful to the Church, either: 1, the Council seems to imply by these words *more worthy*, simply the merit of those worthy to be chosen, by taking the comparative for the positive; or 2, an improper expression is used, *more worthy*, so as to exclude the unworthy ones, but not those who are worthy; or, also, in the third place, the Council means a competition.

48. It seems evident that fornication in itself is not stained by evil, and that it is bad only because it is forbidden; the contrary seems quite unreasonable.

49. Masturbation is not prohibited by natural right. It follows that, if God had not forbidden it, it would often be good, and sometimes obligatory, under penalty of mortal sin.

50. Connection with a married woman, when the husband consents, is not adultery; and this is the reason why, in confession, it is sufficient to accuse one's self of having committed fornication.

51. The servant who, by bending his shoulders, knowingly helps his master to reach a window in order to violate a young girl, and frequently assists him by bringing him a ladder, opening a door, and furnishing him cooperation in a similar manner, does not commit a mortal sin if he so acts through fear of a grave damage; as, for instance, to suffer ill treatment from his master, to be considered as a fool and discharged.

52. The precept of the celebration of feast days does not oblige under penalty of mortal sin, aside from scandal, if there is no scorn displayed in regard to it.

53. The precept of the Church ordering the hearing of the mass, is complied with when two parts of it are heard, and even four said by several priests at the same hour.

54. One who is not able to remember matins and lauds, but is able to say the rest of the prayers, is under no obligation, because the more covers the less.

55. The precept of the annual communion is complied with by eating the Lord in a sacrilegious manner.

56. Frequent confessions and communions are a mark of predestination, even in those who live irreligiously.

57. It is probable that natural attrition is sufficient, providing it is earnest.

58. We are not compelled to confess to a questioning confessor that we are in the habit of committing a particular sin.

59. It is allowed to grant sacramental absolution to persons who have made but half their confession, by reason of a large number of penitents, as may happen, for instance, on a festival, or indulgence day.

60. One must neither refuse nor defer absolution to a penitent in a state of habitual sin against the laws of God, nature or the Church, even when there is no hope of amendment, providing he openly declares he repents, and shows his intention to lead a better life.

61. One may sometimes absolve a person who is in a near opportunity of falling into sin, being able but not willing, to resist temptation, or who even directly seeks it with premeditation, or cooperates with it.

62. One must not avoid a near occasion of sin, when there is a useful or honest reason not to avoid it.

63. It is allowed to seek directly a near opportunity to sin for our spiritual or temporal good, or for the good of our neighbor.

64. A man may receive absolution, although he be ignorant of the mysteries of the Faith, even if it be through blameable neglect that he is without knowledge of the mysteries of the Holy Trinity and of the incarnation of our Lord Jesus Christ.

. 65. It is sufficient to have at least once believed those mysteries.

All these propositions are condemned and forbidden by the Popes, as being at least scandalous, and harmful in practice.

SUPPLEMENT.

SPEECHES

DELIVERED BY

M. PAUL BERT,

IN THE

CHAMBER OF DEPUTIES,

Sittings of the 21st of June, and 6th and 8th of July, 1879,

AT THE

Debate on the Law Relative to the Liberty of Higher Teaching.

SPEECH

Delivered at the Sitting of the 21st of June, 1879.

Opening of the General Discussion.

M. Paul Bert, President of the Commission:—

Gentlemen: It is, I believe, superfluous to call the attention of the Chamber to the importance and gravity of the questions submitted to it by the new Bill suggested by the Government. Perhaps it would be more correct to confine such debate within the limits nearest the truth of facts. A sort of tumultuous agitation has already manifested itself throughout the country. Cries of oppression, of martyrdom, have been heard; and even in the speech of the honorable orator who occupied the tribune at the beginning of this discussion, such fears constantly appear. It seems that the very foundations of society are shaken; that the question itself has to be debated anew. . . .

M. de Baudry d'Asson—That is true.

M. Paul Bert—It seems that the liberty of teaching, written in our laws since 1833 for primary instruction, since 1850 for secondary teaching, since 1875 for higher education, is compromised; it seems that this liberty of conscience for which we, the sons of the Revolution,—of the Revolution that proclaimed it, of the Revolution, unpardonable in the mind of many for having proclaimed it,—it seems that this liberty of conscience itself is threatened.

Well, I think there exists nothing of the kind; I think that the question, although really important, is not connected with these great principles.

In my opinion, and according to the feelings of the Commission who did me the honor of electing me its president, the law submitted to you is neither a law of doctrine, nor a law of organization. . . .

M. de Baudry d'Asson — It is a law of disorganization!

Speaker — Please don't interrupt, or I shall have to call you to order.

M. Paul Bert — It is simply a law of social defence. . . . (Good, from the Left). It is not a law of doctrine; for it does not interfere with the principle of liberty of teaching: moreover, it restores it to its true meaning and its true authority; it suppresses from former laws the despotical regulations which had destroyed freedom of teaching for all citizens; it only regulates it upon a new basis; it creates, so to speak, a new incapacity for a class of citizens.

It is not a law of organization; because it does not alter in any way the regulations which the law imposed by vote of the National Assembly of 1875, relative to the opening, creation, and maintaining of establishments for higher instruction.

It does nothing else but take away from them a title constituting a regular usurpation. (Marks of approbation from the Center and the Left.— Reclamations from the Right).

M. de la Rochefoucauld, Duke of Bisaccia — Then this is a law of usurpation!

M. Paul Bert — Finally it is a law of social defence; and this for two reasons: the first is, that it restores to the State the full possession of a prerogative, . . .

M. de la Biliais—Of a monopoly!

M. Paul Bert — . . . which could never be seriously disputed — that of freely choosing the jurymen commissioned for the distribution of the required grades, either for the obtaining of certain State functions, or giving access to certain professions, entrance into which require proofs of capacity.

The second reason is, that it requests you to take away the right of teaching at all degrees,— primary, secondary, and superior,— from a body of men which it judges (rightly or wrongly, we will discuss this point presently) is using this right simply to

fight against our liberties; to attack the very foundations on which rests our civil, democratic, and lay society! (Applause from the Left and Center — Reclamation from the Right.)

M. Ernest de la Rochette — There are two ministers here who have been educated by the Jesuits!

The Speaker — Do not interrupt; please listen to M. Paul Bert, as M. Boyer has been listened to.

M. Huon de Penanster — They did not listen to him!

The Speaker — I beg your pardon, he has been listened to, as he deserved to be, for the talent he displayed.

M. Paul Bert — And it is not only for reasons of doctrine that the suggested bill takes away from that class of men the right of teaching granted to them by existing laws; it is besides, because those men pretend to live in the bosom of our society in a state of secret association, without having presented their statutes for the approbation of the State. (Good! good! from Left and Center).

M. de la Bassetiere — Their statutes are public; they have been published, and everybody knows them.

The Speaker — M. de la Bassetiere, your name is down, you shall have your turn; in the meantime, please do not interrupt.

M. Paul Bert — And among those groups of men there is one, — among those companies there is one,— whose name is so celebrated, whose performances are so well known, who so many times have incurred, in our country as well as in many others, the judgments of tribunals, the legitimate proscriptions of governments, that the law seems directed solely against it; so that, in the public mind, in the national opinion, according to our electors, the law submitted to you has for its aim to take away from the Jesuits the right to teach the French youth; and the vote for or against it will be equivalent to voting for or against the existence and the right of teaching accorded to the Society of Jesus. (That's it! good! from the Left).

M. Huon de Penanster — That is a proof that you are afraid of them.

M. Paul Bert — It is for that reason, Gentlemen, that your Commission, with an unanimity disturbed only by the dissident

voice of our honorable colleague M. Gaslonde. has rejected the amendments proposed before the submitting of the report, and has discouraged those members who had some intention to suggest others. It is for that reason that its president has voluntarily withdrawn a previous proposition of law on the same subject, and on which he cannot help throwing now and then a glance of paternal regret. (Smiles from the Left). It is for that reason that we declined to ascertain whether it was possible to do more, and even better; that we declined to amend the Government's proposed bill; and that we present it to you, apart from some details of no importance, exactly as it has been submitted to us.

We thought that the moment when the Government we put at our head was taking position,— the moment when the Government which the assembly of 363 had put at its head was marching toward the enemy,— was inopportune for making parliamentary flirtage, and separating ourselves from him on points of details.

From the Right — Whom do you call "the enemy"? you have no right to call us "enemies"! No one has the right here to call Frenchmen enemies!

A Member of the Left — They are no Frenchmen!

M. Paul Bert — It has been said to you. . . .

M. Huon de Penanster — We would have been called to order long ago, if such a word had been used by us.

M. Paul Bert — It has been said to you from this tribune, with an unexcelled eloquence; and you know that it is through that very word that you have been turned away from this House.

M. Huon de Penanster — But we are still within this House!

M. Paul Bert — Gambetta proclaimed it here: "Clericalism, there is the enemy"!

M. de Baudry d'Asson — Then I will say, that the Republican majority is the devouring leprosy of society! . . . (Oh! oh! from the Left.)

The Speaker — M. Baudry d'Asson, I call you to order. (Exclamations from the Right.)

M. de la Rochefoucauld, Duke of Bisaccia—Should it be allowed, to say that we are enemies?

The Speaker — When there is a question of Jesuits, we do not

mean the members of this Chamber. (Protestations from the Right.)

M. de la Bassetiere — There is a nice law of liberty and pacification!

M. Paul Bert — It is for that reason, Gentlemen, that we joined unanimously together; hoping that an immense majority of the Chamber will unite to back the Government, the moment when it endeavors to snatch from the party of anti-Revolution the most recent and, one may say, the most audacious, and one of its most precious conquests; the moment when it intends to take away from those who made themselves the adversaries of society, ...

The Count of Perrochel — There is no party here attacking society.

The Speaker — Do not interrupt! You are not allowed to speak.

M. de Baudry d'Asson — Call us to order, if you like; what is that to us, after you have said that, by calling us enemies, we are not attacked!

The Speaker — No, you are *not* attacked. (Emphatic exclamations from the Right.)

M. de Baudry d'Asson — We protect our rights as fathers of families, and no one can prevent us.

The Speaker — You have the right to answer from this tribune, but not by interruption; I shall not allow it.

Continue, M. Paul Bert.

The Count of Kerjegu — No one has the right to insult us, Mr. President.

The Speaker — But, once more, you are not insulted: I can not allow you to say this. (New interruptions from the Right.)

M. de la Rochefoucauld, Duke of Bisaccia — We are called "enemies"!

M. de Baudry d'Asson — We ask that the orator should withdraw that word!

The Speaker — You are not allowed to speak.

M. Paul Bert — What word have I to withdraw?

M. de Baudry d'Asson — The word "enemies." You may decline; but we request it, emphatically.

The Speaker — You have no right to ask for it.

M. de Baudry d'Asson — Beg your pardon!

The Speaker — Not at all! I call you to order, with special record in the Official Report! (Good! from Center and Left. Exclamations from the Right.)

M. de Baudry d'Asson — Oh! you can make use of it as long as you like! (Noise.)

M. Paul Bert — Your protestations do not astonish me. They prove one thing: it is, that a regular confession exists over this discussion: that there is an equivoque which has not been explained, neither in 1850 nor in 1875; yes, it is now time to speak openly; and it is time it should be dissipated. (Ah! ah! from the Right.) We use the same words, but they have not the same meaning. (New interruptions from the Right.)

M. de Baudry d'Asson — You ought to have spoken in that way before the elections; if you had done so, you would not be here.

The Speaker — I make an appeal to the members sitting on this side (he turns to the Right.) When an orator of the talent and competency of M. Paul Bert undertakes such a mighty debate, during which it is necessary, more than ever, to maintain in full the liberty of the tribune, it is not possible that his speech should be hacked in pieces by interruptions of which the Chamber can appreciate the consequences. (Applause from the Left.)

M. Paul Bert — We do not speak the same language: we, the sons of the Revolution (I have said it, and it is sufficient); and, on the other hand, the representatives, champions and protectors of the Catholic Church,—it being alone the subject of this debate.

M. de la Bassetiere — Ah! Good!

M. Paul Bert — No, we do not speak the same language.

M. Blachere — We speak but French.

M. Paul Bert — I know some other models of yours, Sir! (Laughter from the Left.) We use the same words, but with a different meaning; we appeal to principles having the same label; but not the same source, nor the same end. (Good! good! from the Left.) And when we speak of liberty, we can neither agree nor understand each other. (Good! good! from the Left.) But I must be precise. Liberty for us — oh! I shall not speak meta-

physically; I intend to speak of nothing else but of the liberty of teaching, — liberty of teaching, for us, is the setting forth of personal liberty.

M. Charles Floquet — That's it!

M. Paul Bert — It is a particular case of that precious liberty, consecrated by the first *Declaration of Rights of 1791;* of that liberty for every citizen to express his thoughts in all forms and circumstances possible, under the guardianship and supervision of the laws.

It is that liberty which means liberty of teaching, for us who believe in progress, in perfectability, in translating and teaching to others what we have learned ourselves. It is our right. I should say more: it is our duty. And I feel honored to have written, long ago, these words: "They speak of 'the right of teaching;' they should say, 'the duty' of teaching. No one can, without being a guilty egotist, keep to himself a part of the truth." (Good! good! and applause from the Left.) That liberty, like all others, Gentlemen, has in its display and execution but one limit, which has been determined by the Declaration of Rights,— that is, liberty for others: personal liberty ends only at the point where the liberty of other citizens is interfered with.

Can we say the same of that liberty as understood, and which must be so understood, by the Catholic Church? It is impossible! We proceed from human right: the Catholic Church proceeds from divine right. She has received her institution from above; she has been erected on a sacred foundation; she has been given the mission and order to teach. It has been said to her: "*Ite et docete.*"

The Count of Perrochel — That is theology.

From the Left — Do not interrupt.

The Speaker — Truly, M. de Perrochel, you will compel me to call you to order, and I would regret it very much for your sake: for, generally, you are not in the habit of interrupting. I request you to have patience and listen to M. Paul Bert, as you intend to answer him.

M. Paul Bert — I am told "this is theology!" Gentlemen, is it meant by this that these words are not historical? If it is, I

accept the interruption. (Laughter from the Left.) I was saying that the Catholic Church declares that she has received the mission — the divine mission — to teach the truth, the whole truth, as all facts concerning this world, as well as heaven, has been revealed to her; that no one has any right to contradict her; that she possesses the sacred sign; that light is not careful, and needs not wrestle with darkness; that error must disappear before truth: she possesses absolute, immutable, eternal, supreme truth; consequently, she is intolerant, and this is her right.

Gentlemen, for the reason that she has obtained her institution from regions to which we cannot attain, for that reason her liberty is not only like ours, — the right to tell the truth, and to teach all which concerns her doctrine, — but her liberty falls, offended, by the mere fact that, in her face, some one tells and teaches something which contradicts her doctrine. (Good! from the Left.)

Such liberty cannot admit competition: it cannot allow it, and it refuses to accede to it.

The Count of Maille — Competition! It is just what she is sticking for!

M. Paul Bert—Beware of heresy, if you speak so, (laughter from the Left); for it is written that no one can limit the right of the Catholic Church; that it must have the direction and supervision of all instruction; that, when the infected schools — those which are not exclusively Catholic—dare stand before the Church, it is an attempt against its liberty!

I well understand by your silence, that you accept this doctrine. (Denials from the Right).

A Member of the Right—Not at all! The Church never said such a thing!

A Voice from the Left—Can you not let him speak?

M. de Baudry d'Asson — Let our Chairman, then, allow us to answer.

The Count of Maille, to the Orator—If this is your theology, I do not congratulate you upon it.

M. Paul Bert—As you do not agree with my reasoning, because you think that my interpretation of the thinking and doctrines of the Catholic Church is erroneous — of which I am not surprised —

allow me to strengthen my argument with the help of more competent authorities.

I was saying that the Catholic Church must have not only liberty but also the monopoly; she needs it, she will have it, and she insists upon having it. I say that she is right; for intolerance is one of the signs of positivism; and, in religious matters, tolerance is one of the forms of scepticism. She insists upon it; and she exacts also that governments come to her help and suppress all that offends, contradict or injures her. (Exclamations from the Right.) Listen to this if you do not believe me:

"The duty of the State is to come to the help of the Church . . . in the work of public education and teaching. . . . The State has certainly the right to propose, build and open public schools, chairs for all kinds of universities and branches of teaching; she may transfer the teaching to all sorts of persons, lay, religious or ecclesiastical; but always on condition that the Church, which is the only depository of the faith and of the interests of Christ and souls, should supervise the same and direct the teaching, so as to prevent error from spreading in those places, under pretence of science, literature or history (Smiles from the Left); and may find in the teachers true auxiliaries for the great work intrusted to her by God.

"Such is, in its entire meaning, the thesis of liberty of teaching and education.

. . . . . .

"We are happy when we really enjoy that wretched equality between falsehood and truth, between heresy and faith,—which in modern style is called liberty of teaching. For us, it is indeed liberty, though not full and complete; for others, for the rationalist, protestant, free-thinking teachers, it is simple license. When they clamor for liberty of teaching, they ask but for license for teaching. They claim and obtain, not the noble right of using, but the disastrous faculty of abusing teaching.

"In our unfortunate France, such is the case with University teaching."

There is the doctrine of the Church!

From the Right—Who is the author of that?

M. Paul Bert—I am quite ready to tell you. The author is a distinguished and well-known ecclesiastical dignitary, Mgr. de

Segur; and the book from which I quote is approved by a Papal brief. (Laughter and applause from the Left.)

The Count of Maille—You always confound dogmatic with practical questions! (Exclamations and laughter from the Left.)

M. Paul Bert—The honorable M. de Maille is right, and I thank him for his interruption, not that I had confounded between the theoretical and the practical question, but I had to mention the former before speaking of the latter. In Rome, this year, schools have been opened under the direction of Protestants; or, as is said, of Free-thinkers.

Well, it is not a question here of Mgr. de Segur, but of the Pope himself. It is not now a question of theory, but of facts. What is the saying of the Pope?

"We cannot keep silence on the strange impudence with which they dared to open anti-Catholic schools under our own eyes, at the very doors of the Vatican. . . .

". . . Our situation is consequently such that we are obliged to let error be free to raise up its chairs in our city, as we are not at liberty to use efficacious means to destroy it, and compel it to silence." (Laughter from the Left.)

Is this not the practical question? And now, if you do not well understand this text, you have only to recall the Middle Ages, and read this phraseology by the light of Vanini and Giordano Bruno's burning piles! (Applause from the Center and Left.—Exclamations and ironical interruptions from the Right.)

Such is the thesis, Gentlemen! And now, if one of you laughs or protests, I shall say to him: "*Anathema!*"

"Anathema" to whosoever says: The entire direction of the public schools, in which is educated the youth of a Christian State,—with the exception, in a certain proportion, of the episcopal seminaries—should, and must be placed under the supervision of civil authority; and this in such a manner that no other authority should have the right to influence the discipline of the schools, the direction of studies, the arrangement of grades, and the choice or approbation of teachers.

Anathema to whosoever says: Catholics may approve of a method of education outside the Catholic faith and the Church's authority, and which has for its purpose, at least for its chief purpose, the knowledge of merely natural matters and the interests of social life on this earth."

This is the truth; this is the situation.

Was I right in saying that when *you* pronounce "Liberty," when *you* say "Liberty," we cannot understand each other? Was I right in saying, that when you say "*Liberty*," you mean, and we understand, "monopoly"? (Good! good! from the Center and Left.)

Ah! I well know that the times are hard and difficult; that one is obliged now and then to bow before the spirit of the century, and content one's self with half-liberties.

Yes; Mgr. de Segur says also:

"The Church may find herself face to face, either with unfriendly, indifferent or friendly powers.

"She says to the first: Why do you strike me? I have the right to live, to speak, to fulfill my divine mission, which is entirely one of benevolence; you are wrong to do me harm, to work against liberty!

"She says to the second: He who is not with me is against me. Why do you remain indifferent to God's cause? Why do you treat falsehood as on the same footing with truth, evil like good, Satan like Christ? You have no right to remain in such indifference!

"She says to the third: You live in the truth and you act according to the will of God; help with all your might to bring about the glorious reign of Christ, and at the same time to make shine, through him, truth, justice, peace, happiness; help me to destroy and suppress as completely as possible, everything which is contrary to the most holy will of God, and the true welfare of men.

"Such is the language of the Church amidst the world; in fact, it claims only one thing: the liberty to do good, the only true liberty."

Gentlemen, I maintain that when you say "liberty," you mean "monopoly." And I say, that, when we pass a law of the nature of that brought before this tribune, you may, perhaps, in the name of the logic of our principles, attack us and tell us: "You are in contradiction with your principles; you go against them; you are not logical; and we are going to prove it to you." It is your right, this discussion. But there is something you have no right to do: namely, to get angry, because that anger contradicts your own principles. Well, Gentlemen, the proof of all this is easily found in the history of liberty of teaching in our country.

Before the Revolution, was it ever a question of liberty of teaching? There was then a great and flourishing University, that of Paris, besides a certain number of smaller ones, most of them in a state of decay, and some almost closed. No school could be open outside of them, without the assent of the King. And no degrees were conferred in those universities, but by direct delegation of the *secular* power; it was not a question whatever of liberty of teaching. Here and there, some congregations opened a few colleges; but the arrangement of grades was severely interdicted to them; sometimes even they were forbidden any preparation of degrees, and they could open their establishments only after having received a license from the King.

It was a monopoly. And why did the Church stand it so patiently? Because it had the whole control of it; because those universities were receiving canonical instruction; and nothing — absolutely nothing — could be taught having in it a shadow of heresy. It was because the composition of the teaching-body, the supervision of the bishops, and the King himself strictly guaranteed the orthodoxy of the doctrines; because the burning-piles of the Sorbonne (however harmless they had become, burning nothing else but books in the last century,) were yet an efficacious protection.

And moreover, the King was conservator, protector, defender, executor of the rights of the Catholic Church,—these are, I believe, Domat's very expressions,—the King, who swore under oath at his coronation to exterminate heretics,—always sufficiently educated against any dangerous teaching. Who would have dared, then, to claim and insist upon liberty of teaching?

Philosophers had to make use of clandestine presses, or the presses of Holland. As regards Protestants, so recently as 1787, they had to petition for civil rights to be granted to their children. . . .

M. de la Bassetiere—Louis XVI. granted it to them.

M. Paul Bert—Yes, Louis XVI. accorded it; but, almost unanimously, the members of the clergy, in 1789, protested against this decision. (Applause and laughter on the Left and Center.)

It is at the time of the Revolution that the thesis and doctrine

of liberty of teaching first appear. It was contained impliedly in the Declaration of Rights of 1791; it is formally stated in the legislation, by the decree of the 29 Primary, year II., whose first article reads: "Teaching is free."

But at the same time, conditions were imposed on those intending to teach; and there is the true ground.

Liberty of teaching, by natural right, as understood by the Revolutions,— such as we understand it ourselves,— consists in the free expression of one's thoughts. Therefore, free liberty must be granted; all facilities must be accorded by the law to him who publicly addresses himself to citizens like himself, with sound and fully developed minds; who proclaims to them certain doctrines, certain theories, and tries to enlist them in a particular scientific, historical, literary or doctrinal party.

But when it is a question of addressing one's self not to adults, but to children; when it is a question of speaking, not in public but in a class-room, in a school with closed doors; when it a question of holding young minds under secret guardianship; to keep them away from any foreign contact, to have over them an unique influence, often isolated from the control of their family; when it is a question, at such a tender age, to impress on their soft brain a mark which will last forever; then the legislation must interfere. As early as Primary year II. of the Revolution, there were required certain conditions of capability and of respectability, without which it was not allowed to open schools; and schools once opened, it was necessary that precautions should be taken for supervision as to their proper management.

The legislator therefore appointed inspectors to constantly watch if anything in the doctrines or proceedings of the teachers constituted a danger to the public peace or morality. This is the true thesis, such as was proclaimed by the Revolution! (Good! Good! from the Left. Exclamations from the Right.)

I hear protestations against what I say. I know very well that nowadays such protestations are not made with very considerable energy; but whoever has followed the campaign for the laws on primary and secondary teaching,— which commenced in 1830 and ended only in 1850,— is aware how emphatic were the arguments

against this doctrine. It was said to interfere with the rights of fathers of family,—as is said also to-day,—by preventing them from choosing the teachers they wished for their children; by obliging those children, and the professors appointed by their fathers, to pass certain examinations. It was said that the State, by substituting itself for the fathers of families, was assuming a privilege of which it was unworthy; because it had no doctrine, and consequently could have no authority in regard to teaching.

I noticed in the speech of the honorable M. Boyer a trace of that way of thinking, when he said that "the State has no doctrine, and no morals;" and I felt much astonished at hearing such a thing come from such a deep-thinking mind, from a man so highly esteemed by the Chamber and the Nation. (Warm approval from the Center and Left).

And could you not, at the heading of our Codes,—as is printed on the title-page of other books: "Commandments of God and of the Church,"—could you not write these words: "Commandments of the State"?

The State, therefore, has morals and doctrines. What you might have said, and what should have been said,—instead of using the famous phrase of Roger Collard on the teaching of the State,—is, that the State has neither religion nor metaphysics. (Renewed approval from the Left.)

It was alleged that the primary conditions and supervision were interfering with the rights of fathers of families. Oh! those rights of fathers: *we* have the right to invoke them; but we may feel surprised that *they* of the other side (the Right,) dare invoke them.

The passion and grief of the father of the family have been expressed in eloquent terms: poor father! compelled to send his children to a school where will be taught them doctrines offensive to his conscience, compromising, in his eyes, their eternal salvation and their worldly morality.

All this has been said, and with reason; but those who were so indignant might congratulate themselves that they spoke in the nineteenth century, and were Catholics; for if they had happened to live in 1686, and they had been Protestants, they would have suffered the effect of that edict of Louis XIV. by which the chil-

dren of Protestants were taken away from their families at the age of five years, and sent to Catholic schools! . . . . . .

M. Bourgeois — That is a proof that we wish to live according to our time.

M. Paul Bert — Do you mean to say that you want to acknowledge modern progress and civilization? (M. Bourgeois and several other Members of the Right: Oh!—From the Left: Ah! Ah!)

M. Bourgeois — There is room enough for both God and Science in the world! (A Member of the Left: "The Pope says, No!")

M. Clemenceau, ironically — Science is heretical!

The Count of Maille — Liberty of conscience was granted for the first time in 1814 by the "Chart;" and I defy any one to say or prove the contrary! (Exclamations.)

M. Paul Bert — We are told that things are going to change; that new doctrines are suggested; that it is desired to live according to modern times, being willing to make a compromise with liberty and progress; that now there is a Catholic liberalism. I do not wish to refer you to the *Univers* or to the *Civitta Catholica;* but listen to the last anathema of the SYLLABUS of 1864:

"Anathema to whomsoever shall say: The Roman Pontiff should, and must, reconcile himself to, and harmonize with progress, liberalism and modern civilization." (Repeated applause from the Left and Center.)

M. Bourgeois — You must not quote that anathema without giving the explanation.

M. Paul Bert — You have no right to explain it.

M. Bourgeois — I shall explain it!

M. Paul Bert — The Pope, in a Brief of 1869, has declared, that no one is allowed to explain or interpret those words; that they must be taken literally. I will read that Brief to you, if you wish it.

M. de Soland — He has congratulated the Bishop of Orleans, who made a commentary upon it.

M. Paul Bert — Read to the end of that letter of congratulation. It belongs to the category of correspondence, of which it has been said: "Silence is the best policy." (Ah! Ah! from the Left.)

The right of the State, which has been contested, — can it be doubted? No; as I said, the State has no scientific doctrines; it leaves to the church the right to have an astronomy, a geology, a physic, a history of her own. (Smiles from the Left.) The State has no scientific doctrines: it has MORAL doctrines — doctrines of social preservation!

On this ground, the State is sovereign master; on this ground, it must scrupulously examine, if the men to whom it entrusts, or grants the right to entrust, the education of the young citizens, are worthy of that confidence; it has the right to examine if their doctrines are not dangerous to the public peace, to the social order; it has the right to examine if, by entrusting those young men to them, it does not prepare for a civil war in a longer or shorter period. (Good! good! from the Center and Left.)

M. M. de la Billais and Ernest de la Rochette — It is an insult! We have been brought up in that establishment. We protest.

The Speaker — Gentlemen, do not interrupt.

M. Paul Bert — I do not understand these interruptions.

M. Ernest de la Rochette — We cannot allow anybody to attack us.

The Speaker — The orator has the right to judge and examine those doctrines which at various periods and under the judicial and royal authority — appealed to by yourselves a while ago — have been considered as liable to lead to the disastrous excesses condemned by the orator. When your turn comes, you may refer to history and explain your doctrines; but, in the meantime, I request you to let the discussion proceed. (Good! good! from the Left.)

M. Paul Bert — I beg your pardon, Gentlemen, I have not come to the point yet. Once there, I will understand your interruptions and protestations. We stand on the ground of general doctrines, where monarchy placed itself before the Republic followed, namely, that the State, in an absolute manner, or, rather, in an abstract manner, has the right to concern itself as to the consequences of doctrines impressed on the minds of youth. There is no doubt about that.

I would understand your protestations if it were a question of a monarch! I do not know if you would make them then; but I should understand them. It would be a question of a single and supreme will — of the will of a man set on the throne by heredity or usurpation. (Applause from the Center and Left.—Protestations from the Right).

But I stand on simple doctrines, and I confess that I do not understand your protestations: this lets me foresee terrible storms for the moment when I shall reach the region of facts.

I say, that if the power of the State were remitted to the hands of a monarch, fatal consequences, and its degeneration into tyranny, might be the result. We have had many examples of it; but this suspicion, justified by the authority of one man, how can you have it in a democratic Republic? Who is master here, if not the Nation? Who makes laws and imposes conditions, if not the universality of citizens; consulted, and, so to speak, concentrated into one or two Chambers? And who shall be sovereign in the nation, if not the Nation itself? Who can judge the nation, if not the Nation?

Will you say that it is the Church? Acknowledge, then, that you proclaim again your thesis of absolutism, and you will tell the truth; but do not talk to me of liberty of teaching.

To the liberty of teaching proclaimed by the Revolution, the University succeeds.

That conception had, indeed, its magnitude: it has shown it, and shows it yet. But the University contained in itself a vice — MONOPOLY; and the monopoly consisted in the fact, that, instead of saying, as stated by the Republican thesis, "You shall have liberty of teaching, under the condition of having previously fulfilled certain formalities, and furnished certain certificates of capability and morality;" the University said: "Notwithstanding your certificates are in good order, you shall not be allowed to open schools without my authorization."

This is monopoly!

However, the teaching given by the schools of the State was so wise, so moderate, so much in accordance with the moral need of the majority of the nation, that liberal minds did not protest. The

Church alone protested, and with an ardor and intolerance that is unparalleled.

Actually, the thesis has been rendered much easier, and they have been obliged to give up a good deal! It is generally acknowledged that the University is respected. One feels honored to have been its pupil — to reckon some friends among its teachers. All that is very pleasant. But it was not so when, formerly, it was directly attacked.

M. Bourgeois — I don't know about that. I was not born!

M. Paul Bert — At that time, the University was the infected school; it was—for this expression has been a kind of watchword —"a great repository of public instruction." Listen how it was spoken of: It was "the negation, the annihilation of all notions of good and evil, of all divine and human laws, of all true sanctions; it was fatalism, suicide, crimes of all kinds, destruction of all morality." ("The Monopoly of the University;" Paris, 1843.) This is one extract among a thousand.

Some Bishops, by their insults, were appealed by writs of excess.

Then, the Church alone protested against the monopoly of the University. And why did they protest so much, while accepting so cheerfully the monopoly of the old monarchial government? Merely and always for the same reason; because they were the high supervisors of the ancient teaching; and the University, without excluding them from the direction—far from it—had left them absolute sovereigns neither of the programs, the teaching, nor of the teaching staff.

However, the legislation of 1808 had written at the head of the Constitution of the University: "The teaching shall be given according to the doctrine of the Catholic religion."

Yet, in 1814, the Catholic Church having become the State Church, her principles were imposed on the nation with still more rigor.

But, no matter! The time had passed: the Revolution had done its work. The idea of liberty of conscience had become incorporated with the customs; and, while respecting the general dogmas of the Church, the teaching of religion was set apart in the tuition

of the University. It did not predominate over everything. From that arose the quarrel; the raising of shields in the name of liberty; the campaign of 1831; and finally, the triumphant campaign of 1850.

If the Church had dared, at that time, to state her claims in the way that I pointed out at the beginning of this speech, they would doubtless have been rejected by the good sense and wisdom of the country. But they had taken shelter under the liberty of the father of the family,—behind this sacred liberty, the least clashing with which infringes on what is nearest and most sensitive within us. This liberty was used as a shield by those who asked for the monopoly of the Church, by those who would have returned, if they could be the masters, to the Declaration of 1686; that is to say, to the suppression of the liberty of the father of the family!

You know through what complicity of generous illusions, to say the least, the law of 1850 was voted, and also the law of 1876. Had we then secured liberty? Was it liberty of teaching which was proclaimed in 1875? It is easy to ascertain that it was not, and this simply by one characteristic point.

I have said to you, that, for us, liberty of teaching proceeds from personal right. Now, it is a rule in every legislation, and hence in French legislation, that when individual rights are united they are not considered in their totality; for always by association they lose something of their whole importance. Then the State interferes.

Now, strange to say, a phenomenon, unique in our legislation, happened regarding this law of 1875; the individual right is reduced by the law of 1875 to regularly mean conditions, so far so that it was impossible to practice it,—of which we see the proof in the denunciation of certain newspapers against the conferences of the school of anthropology. Well, these limits placed upon each individual's rights disappeared when these individual rights were united: from this juxtaposition, from this union of incomplete rights, rights more complete were born; such rights which go so far as even to extend over the dominion of public power. (Good! Good! from the Left).

I do not believe that our legislation shows us another example of such a peculiar heresy.

The scheme of law placed for discussion before you, re-establishes things nearly in their normal state; it reconstitutes this true liberty of teaching; it gives this liberty of teaching to all those who show a proof of capacity and morality in some particular condition. This scheme of law is not a coming back to monopoly, as it does not recall the preliminary authorization; it leaves standing what actually exists for the liberty of men grouped, associated; but it re-establishes this liberty upon its true basis, the individual liberty.

What is the novelty in it, then? What is, then, Article 7? for it is necessary that we come to it, inasmuch as it excites so much passion. It is the addition to the conditions already required of a new condition. (That's it! That's it! from the Left and Center.)

It is the institution,— I do not insist upon this word, I know how offensive it may appear,— it is the institution of a new order of particular indignity, which will weigh upon a certain class of citizens.

M. Plichon—The most honest citizens, too!

M. Paul Bert—That is what it is; and the question is to know if this indignity is justified, if this incapacity is justified, if the State was right in bringing out to light this indignity, this incapacity. That is the question. (Signs of approval from Left and Center.)

The Count of Maille—That is worth the dogmatic anathema.

The Speaker—Do not interrupt!

M. Paul Bert—Our honorable colleague, M. de Maille, does a very great honor to our Minister of Public Instruction, by placing Art. 7 on the same footing as the Encyclical Letter, "*Quanta Cura*"! (Laughter from the Left.)

The principle of liberty itself is not touched upon; but a new condition of indignity,— justified or not justified, we will see about that later on,— a new condition of indignity is established.

Is it justified? That is a discussion which would take a great deal of time, and require the production at this time of many doc-

uments, which prevents me going further into it for the present, by its very importance; we shall see, when we reach the special discussion of the Article, if the non-authorized congregations really deserve to be placed under the heading of indignity of which there is here a question.

Art. 7 has principally the Jesuits in view, besides all non-authorized congregations.

First: Is this indignity so extraordinary and so new a subject? Is it an invention of our honorable Minister? Is it a novelty?

To the indignation raised by this article, a feeling of surprise seems to be added. I do not know about the value of this indignation; but such surprise cannot be very serious.

As early as 1828, the well-known Ordinances had decided, that in certain establishments teaching could not be authorized, unless by the signing of a declaration that one did not belong to any unauthorized congregation.

M. Blachere — That was monopoly, then!

M. Paul Bert — I know very well that it is said these Ordinances do not signify anything; as it is said that the decree of Messidor, year XII., is a work of passion, and that it was to pay the ransom of M. de Villèle, that Charles X. was compelled to expel the Jesuits from the secondary teaching.

Ah, Gentlemen! that would show only one thing: namely, that the Jesuits were really very much hated by the whole population, so as to afford the hope that, by the sacrifice of the former, the Villèle ministry, compromised as it was, could be saved. Yes, they must have been very unpopular, for a man, who certainly was not a radical, M. de Carné, to be able to proclaim before the Chambers of Deputies that the measure had been received with enthusiasm all over France! (Laughter and applause from the Left.)

In 1844, when the law on secondary teaching was in discussion, a man, who was not a Radical either — nor will I presume what place he would occupy actually in this Chamber, nor make any comparison which might be offensive to somebody here,— but finally, a man who was certainly not a radical, the honorable Duke of Brogile, said:

"To the diploma, the private teacher . . . should add a written certificate that he belongs neither to any association, nor to any congregation which is not authorized by law. This obligation has nothing new in it."

I am one of those who think, that the Ordinances of 1828, having been voted under the empire of monoply, and the law of 1850 having given liberty of teaching to every citizen, the members of the non-authorized religious associations have the actual right to teach the three different degrees. (Good! from the Right) It is precisely for that reason that the honorable Minister of Public Instruction requests you to deprive them of this right. (Good! from the Left and Center.— Exclamations and laughter from the Right.)

That is very clear, indeed; and I am astonished at your laughter.

It is to say, besides, that this Art. 7 is dangerous from this fact, that it seems to annul existing legislation in the matter of the existence of the non-authorized religious congregations. By taking away from them the right of teaching, which the existing legislation grants to them, many people think you thus recognize their true existence, and all previous legislation is made void.

I do not believe this. I am one of those who think,— and some jurists, more learned than a simple licentiate at law shall be heard from this tribune pleading this important thesis,— I am one of those who think that the law of 1790, that the law of 1792, that the decree of Messidor, year XII., are in force yet. I am one of those who say, as did M. Thiers in 1845, that if these laws prohibiting the religious congregation are now void, then the congregations fall under the execution of Art. 291 of the Penal Code of the law of 1834 on Associations. I will add, that if these last laws do not apply to congregations, the reason is, the latter are regulated by the laws of 1790 and 1792.

M. Bourgeois — You might speak to us of M. Thiers in 1850.

M. Paul Bert — Thus, either they fall, as congregations, under the execution of the law of 1790; or they fall as associations under the execution of Art. 291 of the Penal Code.

Because, finally, you cannot imagine that these associations are regulated by no law whatsoever!

A man of great authority, Chancellor Pasquier, who cannot be suspected of radicalism, said, in 1827: "It is an eternal principle, independent of positive laws, which does not allow a society, whatever it may be, to be formed in a State, without the approval of the great Powers of the Nation."

Congregations, therefore, are in view of and under the control, either of the law of 1790, or of Art. 291 of the Penal Code; or if it became impossible that either of these laws apply to them, it is necessary to immediately make a law for the congregations, which would have, I am sure, nothing to gain by it.

But, suppose that the Minister of Public Instruction and the State Secretary, following that thesis which declares that Art. 291 of the Penal Code applies to religious congregations, proceed against their members and secure judgment against them to the full penalties of this severe law of 1834, whose abrogation I hope we shall soon note; then, immediately, on the strength of Art. 26 of the Law on Primary and Secondary Teaching, and of Art. 8 of the Law on Higher Education, congregations would be placed under prohibition, through incapacity of teaching. I believe, Gentlemen, that it would have been more prudent for the congregationists to have accepted this lenient and moderate compromise, prepared by the Minister of Public Instruction, and have used it as a tacit acknowledgment of their existence.

M. Baudry d'Asson—You are very kind towards us, indeed!

M. Paul Bert—The Members of the Commission had before them an Amendment, on which, doubtless, a considerable debate will be raised in this Chamber. It was said to us: "What do you fear from the teaching of the religious congregations? What do you wish to fight against, by Art. 7 of the scheme of law? You propose to fight against the doctrines they are teaching, because you consider them dangerous. You believe, rightly or wrongly, that there exists in the bosom of this society, based on national sovereignty, some associations teaching scorn for the sovereignty of this nation. You believe that, in this country, in which politics rest on universal suffrage, and which is characterized by a Repub-

lican government, there exists some associations which teach scorn for universal suffrage and our Republican form of government. You fear a social danger from the doctrines of the Jesuits, — such doctrines as were proscribed so many times, and which have raised against them universal reprobation, at least in the last century. And you say that, because of these doctrines, Jesuits' teaching must be prohibited.

But look out! these doctrines were simply Jesuitical doctrines in the last century; they are no more Jesuitical now-a-day; they have become the doctrines of the Catholic Church itself. All congregations, and, moreover, all members of the secular clergy, — all those who receive Catholic investiture, — are compelled, by duty to conscience, to teach the doctrines of the Jesuits. The Catholic Church has, so to speak, crystalized itself around Jesuitism! (Good! from several seats on the Left.)

If, therefore, it is in consequence of these doctrines you will interdict non-authorized congregations, be logical, and extend this interdiction to the secular clergy; because teaching will be just as dangerous in their hands as in those of the Jesuits. This is, Gentlemen, the thesis which has been proclaimed by the Commission, and which will doubtless be brought to this tribune by our eloquent colleague, M. Madier de Montjau. The Commission declined to follow him in that way; it so declined for two reasons. First, we said to ourselves, that if the Government thought of making such a distinction between these two classes of persons, who may be assimilated in the doctrinal point of view, it is because it has doubtless some reasons to think, that if certain dangers exist on one side, they are attenuated on the other; perhaps it has, through private inquiries made at home, and particularly outside the frontiers, some reasons to believe that some changes are in progress; perhaps it perceives some symptoms of modifications acknowledged as necessary by many serious-minded men, by many sincere Catholics, bringing back some harmony between the Church on one side, and progress, liberalism, and modern civilization on the other.

In fact, we inwardly think perfect logic does not exist in this world; and if the Government requests us to draw a line between

authorized congregations and those not authorized, it is likely it is because it has some reasons for so doing. Then we recall a maxim of St. Augustine. (Laughter from the Left.)

Saint Augustine said somewhat as follows: "God, who is Almighty, tolerates in this world a little evil, though he could prevent it, fearing, doubtless, that by preventing it, more good might be destroyed, and greater evil might be occasioned."

"Likewise governments," — it is still St. Augustine who speaks, —"are often compelled to tolerate certain evil, for fear of preventing more good, or of letting an evil become greater."

This is our first reason: I did my best to sustain it with such authority as would render it acceptable to everybody. (Good! and laughter from the Left.)

Here is our second reason: It is that the secular clergy are practically far different from religious congregations; the recognized congregations are far from being like the unauthorized societies.

M. de la Bassetiere — Not as regards doctrine; they have given proof to the contrary.

M. Paul Bert — Without a doubt; I do not place myself now at the doctrinal point of view. I say there is a wide difference — all of you know it; therefore it is useless to insist upon the point — between the religious orders and the secular clergy, the latter being appointed by the bishops, functionaries of the State, composed of officers appointed by the State, and paid by the State.

This clergy has our confidence; it deserves to have it. We cannot forbid their teaching in a private way. Religious orders, authorized or not, are similar as to their doctrines; but in the judgment of the lay State, there is a wide margin between associations which submit to the conditions required by law, presenting their regulations for approval, modifying them when so requested, — as did the Brethren of Saint-Yron at the beginning of this century, who claimed the assistance and acknowledged the rights of the State; and some groups of men who associate themselves outside of the law, outside of the State, refusing to exhibit their statutes, to submit to the rules of civil society, or even to recognize its rights and supremacy. (Applause from the Left and Center.)

A Member of the Right — That is an error.

M. Paul Bert — Why, then, do they not ask for the recognition of their laws?

M. Plichon — Because they know civil society and all its laws.

M. Blachere — If they act contrary to the law, prosecute them.

M. Paul Bert — In general, those who get round the laws, are those who know them best. (Good! and laughter from the Left). Oh, I do not deny that they are well acquainted with them.

What is sure is, that they will not submit to the State: that they do not recognize the Nation as sovereign. What is certain is, that they are continually opposing the principle proclaimed by Chancellor Pasquier: "That eternal principle, independent of positive laws, which does not allow that a society, whatever it may be, should be constituted in a State, without the approval of the great Powers of the Nation!"

I say, that those congregations are putting themselves in a state of rebellion against the State; that they do injury to the State (Noise from the Right); and I say, that the State has the right to say to them: "You will not recognize my authority; therefore, I will not permit you, who are despising my rights, to teach the national youth!" (Renewed interruptions from the Right).

M. Bourgeois — The proof!

M. Paul Bert — Proof is requested! What proof? The proof that those societies are not acknowledged by law?

M. Bourgeois — That they do not acknowledge the law.

M. Paul Bert — That they will not present their statutes. It is a fact.

M. Bourgeois — Expel them, if they act contrary to the law.

M. Paul Bert — I was saying, that there is between these non-authorized associations and the acknowledged congregations the immense distance which separates people who do not submit to law and those who do. This is the reason why we accepted Art. 7, with the distinction it made between these two different kinds of congregations.

Another formal objection is made. We have been told, "That Art. 7 is not in its proper place; it refers to religious congregations. It should not have been found in a law on Education." It

is added also: "This Article has for its object primary and secondary teaching; it is too general a subject to be inserted in a law dealing specially with higher instruction."

The honorable Minister of Public Instruction will reply to this argument; he certainly will answer triumphantly. We, the Members of the Commission, did not feel inclined, through a sort of parliamentary modesty — through legislative scruples — to put ourselves in contradiction with the Government at the very moment of its execution of an energetic action, and decline to vote for an article approved by us, under the pretence that, perhaps, it was out of place. And why did we not do so? Because the real value of our decision would not have been understood. This is the right of political parties. It would not have been said that we rejected the article for reason of formalism, but because we were not satisfied as to its principle. We are not willing to afford that satisfaction to our adversaries.

Here are, Gentlemen, the reasons which have compelled us to vote Art. 7, the most important, considerable and novel part of the proposed law.

Besides, there is a disposition which seems actually to have passed, in the second place; and the expressions of excitement which it has aroused are nothing but the echo of ancient and far-off passion. It is the Article which restores to the State the bestowing of degrees.

About two years ago, when the honorable M. Wadington proposed a very similar law, its opponents provoked a great agitation throughout the country, and a scheme of petitions, which came in covered with two or three hundred thousand signatures, — which signatures are mostly the same as those which have been more recently presented to us, affixed by but a very small number of active citizens.

A Member of the Right — There are fifteen hundred thousand of them.

A Member of the Left — Including children!

M. Paul Bert — 1,500,000! I am willing to believe it. I don't know anything about it: only a small quantity has been received

by us — 126,153, — reserving the honor of the big lump for the Senate.

It would be fair to strike off the signatures of women and children, which form a considerable quota.

The Count of Kerjegu — Not so many, though.

M. Paul Bert — Also, to deduct such signatures as are written by the same hand. (Laughter from the Left.)

I have seen a certain number of those false signatures, — as many as eight of them following one another in a single petition. These should be deducted, as well those gathered a few days ago in one of the prisons. (Laughter).

M. de la Biliais — As for those who are dwelling there, they are deprived of their liberty.

M. Paul Bert — Let us leave these trifles. Let us take your figures, and accept your statement of 1,500.000 signatures. I say, those 1,500,000 signatures ought not to be mentioned here, before this Assembly. We represent a far larger number. Two years ago, after an order of the day . . .

A Voice from the Left — There are *not* 1,500,000.

The Speaker — We cannot verify the statement just now. It is therefore better for both parties to refrain from such exclamations.

M. Paul Bert — . . . After an order of the day relative to ultramontane intrigues, and voted by 363 members, a campaign commenced, during which this Chamber had to give way. The consequence was dissolution, and we returned to our electors: we requested them to judge between the acts of those who had caused the dissolution and our own conduct. We denounced to them the clerical intrigues,— or rather the Jesuitical intrigues, to call them by their right name. You know their answer: they elected us again; not only 363, but 385! We do not represent 1,500,000 signatures, including those of women, children, and prisoners; we represent here 6,000,000 electors. (Hurrah! and applause from the Left and Center).

M. Anisson-Duperron — And we, 5,000,000!

M. Ernest de la Rochette — This is the art of grouping figures!

M. de Mailly — Masonic lodges, that is what you represent! (Noise). . . .

M. de Baudry d'Asson — You represent the dying Republic, the agonizing Republic! (Exclamations from the Left.— Laughter from the Right).

The Speaker — M. de Baudry d'Asson, this is an intolerable system of interruption! (Exclamations from the Right.) Gentlemen, I understand very well certain interruptions, and as you see, I do not repress them; but it is impossible, even when done inconsiderately (Laughter from the Left) and without authority, to allow anyone to say, that "the Republic is dying." There are enough people here who know very well that it is living, and that it shall live! (Applause from the Center and Left.)

M. de Baudry d'Asson — We ought to take you as a model, Mr. Chairman, to learn the art of interrupting, as taught by you when sitting on these benches! (Noise.) . . .

The Speaker — M. de Baudry d'Asson, if your mind is made up to interrupt, I shall take the advice of the Chamber, and request it to put a stop to that system! (Approbation from the Center and Left.) Let this notice be sufficient! . . .

Continue, M. Paul Bert, and do not let yourself be disturbed from your discussion.

M. Paul Bert — The honorable M. de Baudry d'Asson was saying that we represent here the dying Republic! . . .

M. de Baudry d'Asson — Exactly!

M. Paul Bert — Decency prevents me telling which is the dying party to-day.* (Good! good! from the Center and Left.)

M. Bourgeois — I guess you are not addressing us!

M. Paul Bert — Gentlemen, the restoration to the State of a prerogative which no one can contest, has been in 1876 the object of very forcible claims, which have since become more moderate, for those concerning Art. 7 were to be expressed previously, and more emphatically, if possible. These claims were expressed more particularly,—and will surely be so again in the speeches of orators who will succeed each other at this tribune,— on acquired rights, and on the great principle of the stability of the laws.

We may likely be told: "You interfere with acquired rights.

* The death of the "Imperial Prince" (Napoleon III.'s heir,) had been made known that very day.

Upon the faith of the law of 1875 capital has been accumulated, colleges have been erected, mutual agreements have been made between professors and those establishments, great expenses have been incurred. You have no right, by the stroke of a pen, to annul those contracts, to make those expenses of no account."

We may also be told: "What becomes of the principle of the stability of the laws, when a law voted in 1875 is suppressed in 1879; when everything is to be repeatedly and unceasingly discussed,— shall the Republic be the government of perpetual instability?"

Gentlemen, when such language is used on the stability of the laws—when it is desired to have a law of long-lasting force,— it must be voted at a time when the Assembly which makes it has full power of action and really represent the national opinion! It should not be delayed, as was done in 1875, until a Chamber, having prolonged its sitting beyond every limit and expectation, —and even, according to nearly half of its members, beyond its rights,—should have come, dying and in the spasms of agony, to vote a law with only 50 majority! . . .

M. de la Bassetiere—It was that very Assembly which instituted the Republic!

M. Paul Bert—Even during the discussion of the law, warnings were not lacking: several orators declared that such a law would scarcely survive to the National Assembly. . . .

During the parliamentary vacations following the vote of the 12th of July, 1875, some authorized voices,—voices whose authority and power were soon to be extended,— have declared that the law would soon be abrogated.

Many among us have made such a promise in the course of the electoral period; so that on its entry to office, the Government, in its message, and soon after in a proposition of law, requested us to revise what was excessive in the law on liberty of higher teaching, the collation of degrees, and the mixed jury.

This bill, voted by us, was rejected in the Senate, by a majority of two votes! You know that.

I ask you, in good faith, whether it was possible to think that law was going to be of long duration? if those capitalists who

united, at the request of the French bishops — in contradiction of the concordat, but let us not insist upon it, — to establish the Universities of Lille, of Lyons, etc., could in good faith say, that they will be surprised the day when this excess of power will be taken away from them.

Oh, if it were a question of destroying those establishments, — of closing them, of discharging the totality of the teaching body as well as the pupils, — I concede that, in spite of all these warnings, you might have some good reasons to give, some sound motives for complaining of persecution.

A Voice from the Left — Apparent reasons!

M. Paul Bert — Those reasons, the Chamber would judge; but in the actual situation, I maintain that you have no appearance of reason to give: I maintain that it has been impossible for any University founder, or any appointed teacher, to think that the mixed jury would continue to exist beyond a few months after the meeting of the Assembly of 1876.

M. de la Bassetiere — Why not?

M. Paul Bert — It is said, also, that the collation of degrees does not touch questions of principle; that there is in it nothing fundamental or vital; that the Government is seeking only aggravating and ruinous measures, so as to prevent Catholic universities from existing.

I believe, on the contrary, and the Chamber thought in 1879, with an immense majority, that it is a question here of a right of which it is impossible to despoil the State, the reason of which is very simple: In every country of the world, in all times, the State has required from its officers certain pledges of capability; and those pledges could be furnished only before delegates of the State.

From this it clearly follows, that the State must be entirely free in the choice of its delegates. Now, what is the object of the law of 1875? It takes away that liberty. It compels it to take from certain bodies, constituted outside of itself, on whose recruitment it has no kind of action, over which it has but a right of inspection extremely vague and not really known — it compels the State to take into the bosom of those bodies a part of the members of its

Jury of Examination, when it ought to be absolutely and perfectly free in its choice.

There may be some attractive point in the thesis of the special State Jury, which certainly will be presented to you from this tribune. The Commission has not failed to attend to it. It has not failed either to take into consideration the solution just accepted in Belgium, which consists in granting, through a direct and special delegation of the State, to all free Universities, the right to confer their own degrees. In fact, one of our honorable colleagues, the Duke of Feltre, has proposed the same plan in his suggestion.

But if, taking it at the worst, one may see in this a contradiction of the principles I have just named, — when it is a question, as in Belgium, of Universities which had already been of long duration, had given certain pledges, had made themselves appreciated by the public and the State for twenty or thirty years, — it is impossible to discuss the question to ascertain whether the State is going to withdraw and deliver the collation of degrees, for the only reason that a University would be established, with the help of teachers! Consequently, we have rejected the proposition of the Duke of Feltre as insufficient, dangerous, and premature. (Good! good! from the Center and Left.)

There remains the thesis of the State Jury: that Jury where it is to be gathered.

No one ever had the thought of depriving the State professors of the right to grant degrees to their own pupils! . . . . . .

M. de la Bassetiere — To be both judge and defendant!

M. Paul Bert — Consequently, it would have been necessary to institute a jury for free universities. This would be giving two origins to the same degree, which is the most foolish and reckless action imaginable. We have rejected that system.

The true State Jury we found already constituted: it is the body teaching and examining the faculties of the State.

Here are the reasons for which we have voted the Article restoring to the State the collation of degrees.

But we are told: "This article is harmful and ruinous; it will close the doors of Universities! And to that ruin dishonor is

added; because you take away from them titles they had borne since the 13th Century; for, through a peculiar and genealogical miracle, universities established three years ago invoke the remembrance of ancient faculties, and consider themselves as their heirs." (Laughter from the Left.)

M. de la Bassetiere — That is true; they are their legitimate daughters.

M. Paul Bert — We are told: "You deprive them of a title they possessed since the 13th century," excepting a certain interval. (New laughter from the Left.) They add that, "We do injury to those universities." I have been, indeed, astonished to see that thesis developed in one of our most important reviews, by the pen of a writer bearing a name much respected in the University. This writer protests and affirms that things did not get along in the same way in 1850; that such an insult had not then been made to places for secondary teaching; that they had not been refused the right to bear the titles of High School and College. It is certain that this interdiction had not been enacted. But what is sure, also, is, that under the Empire, a decree of 1860 restricted to State establishments the exclusive right to bear the title of Colleges and High Schools; and for this reason they were interdicted to others, under the pretence that such titles are State titles, — that is, the property of the State; that such an usurpation constituted a regular offence against the right of property; and, at the same time, there is involved a question of loyalty.

Now, while speaking on the subject, I recommend the too-long-neglected execution of this decree to the attention of the Minister of Public Instruction, who may find more than one opportunity to enforce the said decree.

Gentlemen, I do not think that the fact of depriving schools for higher teaching of their titles of Colleges and Universities, — as well as taking away from them the collation of degrees, for restoring them to the State Jury, — may be of such importance as to threaten the very existence of those institutions.

I dare say, that those very men who protest with such bitterness, have neither the intention of closing their establishments, nor the fear that they will be deserted by their pupils.

We have, in this instance, several examples to present: A school which is growing in authority and becoming renowned, even abroad, the School for Political Science, instituted in Paris a few years ago, is actually prospering, and has numerous pupils. It does not call itself a "University;" it does not confer any degrees; or, at least, the certificates of capacity granted by its directors are of no official value!

The same may be said relative to a more recent school, but which nevertheless will surely, also, attain celebrity — I mean the School of Anthropology!

And I cannot help mentioning that, this very day is celebrated the centennial of the foundation of that illustrious Central School, although not bearing the title of University, and whose coveted diplomas are of no State authority! (Good! good! from the Left.)

No, you have nothing to fear, if you do what you propose, — if you desire to provide for certain things that are lacking, to give certain instruction neglected by the State, or even do better in teaching than the State schools; if you earnestly mean to work actively for the progress of science, the improvement of higher teaching, your educational institutions will prosper.

But if such is not your intention, — if you feel no interest in the true progress of science, — if you appealed to Catholics, disquieted and impassioned, only for the sake of increasing the funds of free establishments, ... (Laughter from the Center and Left); if, as per the report of certain calumniators, you wish — and that "you" does not apply to any one present, — if you want only to have, in the cheapest way, the greatest number possible, within medical universities, physicians who dispose or prepare their patients (renewed laughter from the Center and Left); if you wish to have in all law universities notaries giving advice on the disposition of wills, (Applause, on the same seats.— Protestations from the Right.) . . . .

M. de la Rochefoucauld, Duke of Bisaccia — These are terrible insinuations.

M. de la Bassetiere — Mr. Chairman, it is impossible to allow such insinuations; and I refer them to your highest sense of jus-

tice. It can not be allowed to bring forth at a French tribune such allegations without accompanying proof.

M. Paul Bert — I said, Gentlemen, that the "you" did not apply to any one here present. (Exclamations from the Right.) Do you want me to say now, that it does not apply to any one of the existing universities, and that I am merely drawing a hypothesis of what is not likely to exist?

M. de la Bassetiere — Why do you talk about it?

M. Paul Bert — Well, I ask you, Gentlemen, if, by any possibility, there were such universities, having no other purpose but the preparation, in those conditions and for that end, of notaries, lawyers, ...

The Count de Mailly — Being a talented man, why do you not discuss like a man of talent?

M. de Kerjegu — Why do you discuss an impossible hypothesis?

M. Paul Bert — Gentlemen, it is almost as difficult to speak in this case of hypothesis as of reality. (Applause from the Center and Left.)

Finally, if the so-called universities do not accomplish the mission for which they have been instituted, ...

A Member of the Right — Let them live; you shall see! . . .

M. Paul Bert — . . . it is entirely possible that the actual law gives them a mortal blow; and then, of what would they have to complain?

I did not see with satisfaction the institution of that liberty of higher teaching. Not because I am hostile to its principles, ...

M. de la Rochette (ironically) — On the contrary!

M. Paul Bert — . . . . but I confess that I feared the consequences. I explained myself on this point at the tribune of the National Assembly, and you will please allow me to recall the hypothesis I then suggested.

I said, while speaking first of the monopoly system: Here are two children, who were born in the same village, the sons of two friends; they go together to the village school; then to the commercial college, or to the high school; and from thence to the State University. They meet again on the same seats, follow the

same teaching: they are not cast in the same mould; as it has been said, they will not be the effigy of the same stamp,— and our own discussions, we who have been brought up in these conditions, are a sufficient proof of it,— but, at least, they will have learned to know each other, and to love each other.

Among their teachers — among their older schoolmates — they will have met with the expression of diverse feelings, opinions and doctrines; they will have compared them with those directly taught in the bosom of their families: and then they will have formed for themselves a conviction and a doctrine of their own, which might be erroneous, but which, at least, will be impregnated with that spirit of tolerance which is the fruit of an earnest conviction. (Exclamations from the Right.)

That is the consequence of monopoly. It has its inconveniences, I said so; but you see that it has also its usefulness and greatness.

And now, in the actual state of things, what may, or what is going to happen? One of these children is going to follow the evolution I just spoke of: he goes to the public secular school, to the State college, and to the State university; and on his way he receives that instruction alluded to — that education impregnated with tolerance. (Laughter from the Right.)

Yes, Gentlemen, it is precisely because it is impregnated with tolerance, because it is the enemy of fanaticism, that fanatics themselves have alleged that it causes degradation of character.

The other child will go to the Brothers' school, to the Jesuits' college, and, finally, to the Catholic university, not seeing his friend for many years,— and what kind of instruction has he received? I do not speak of the scientific teaching; that is not of much interest for the Chamber, although I cannot help recalling that maxim which will have directed all his education, — that maxim of a celebrated and eloquent doctor, Joseph de Maistre, who, if he were living to-day, would defend Catholic universities, namely: "Ignorance is better than science; for science comes from men, and ignorance comes from God." (Laughter from the Center and Left.)

M. de la Biliais—He did not put that maxim into practice. (Exclamations from the Left.)

M. Paul Bert — Oh! Sir, these are maxims which are practised on others — on those over whom one wishes to dominate, — and are simply used as instruments of power. (Renewed applause from Center and Left.)

M. de la Bassetiere — Please quote to us the words of Voltaire, who wanted for the people only a plow, a yoke, and some hay!

The Speaker — Do not interrupt!

M. Paul Bert — Gentlemen, if you do not like me to quote De Maistre, I will relate to you some facts I witnessed personally; I will speak to you of pupils who present themselves for the higher diplomas, after having poured into their inkstands a few drops of the water of Our Lady of Lourdes, so as to ensure their success. (Double salvo of applause from the Left. — Protestations from the Right.)

M. Bourgeois — Perhaps his lay teacher will not be learned enough to chemically analyze it.

M. Paul Bert — As regards moral teaching, we shall talk about it when we reach Article 7, — when we shall commence its special discussion, and we shall see whether the modern casuistry has sufficiently rejected the disgusting maxims of Sanchez and Liguori. (Noisy exclamations from the Right.)

You will then judge if this word is overstrong. As I do not give the proof to-day, I will withdraw it if you like; but when I come to its explanation, you will ask me yourselves to recall it. (Good! from the Left.)

So much for science; that is for morals: but we are here a political assembly: let us see what the child will have learned in respect of practical politics.

He will have learned that the Catholic Church must be the only Master and Sovereign in the world, and completely dominate and rule all secular governments, which have only duties to fulfill towards it, while it has all the rights, "for it is King and Emperor, or nothing at all," according to the saying of M. de Montalembert.

And if he has been in the school of law at Lyons, he will have learned that, "even in questions of simple social utility, the Government can do nothing without the assent of the Church."

He will have learned — these are sacred words — that "there is

an anathema against whomsoever pretends that it pertains to the secular power to determine what are the rights of the Church, and the limits within which she may exercise them."

He will have learned from the mouth of Gregory XVI. that "liberty of conscience is a delirium — '*deliramentum.*' "

He will have learned from the mouth of the late Pope, that "universal suffrage is an universal lie; that it is a delirium to pretend that citizens have any right to the liberty of expressing their opinion."

He will have learned, in short, to despise —and from that to hate, there is but one step — all the principles which are the foundation of our social state and our political state; and he will be very fortunate if he has not been brought up, for instance, in the diocese of Toulouse, and if he has not been compelled to enlist in the sacred militia, in the Papal militia; if it has not been said to him, in inflammatory language, that the hour has come, that the sacred bugle has sounded, that the flag is unfurled, and now is the time for the new Maccabees to draw the sword and march to victory or martyrdom!

Well, I ask you, when the young man who has received such instruction meets the friend of his childhood, how will he look upon him? What terrible preparation you will so have made against the public peace? I said it, and I repeat it to you: You will have prepared civil war in the public mind. (Warm applause from the Center and Left.) Yes, you will have prepared civil war in the public mind! Would to God that good national sentiment and public common sense prevent it from going farther! (Good! good! from the Left.)

But we have been told, "It is the consequence of liberty!"

M. de Baudry d'Asson — But there are two ministers here, who have been brought up by the Jesuits!

M. Bourgeois — Those who were just applauding you, have their sons educated by Jesuits! It is a great inconsistency!

The Speaker — Please do not interrupt.

M. Paul Bert — I ask you, Gentlemen, if the quotations I made awhile ago, emanating from authorized mouths, and often from sacred mouths, are not actually taught in the instruction of the

congregations? I ask you, if it is not true, the word of a man whom I regret not to see here any more, because he was not one of those men who dissimulate their thoughts, — I mean the honorable Comte Albert de Mun . . . . . .

From the Right — You rejected him; you invalidated him. . . .

M. Paul Bert — I invalidated him? Yes, for the sake of justice, but with deep regret; for his character and talent did honor to this Chamber. (Good! good! from many seats of the Left.)

Well, you know what he said from this tribune; you remember the words which were gathered and published in the educational books and in Catholic Universities, especially in the University of Lyons: "It is not possible for you, Gentlemen, to say where the Catholic Church begins and where it ends; its authority extends over all."

But we are told, "That is the consequence of liberty!" I do not believe it; I think liberty might have been secured on other conditions; I believe that liberty could be organized even in State institutions.

I expected it to be quite different. I had imagined liberty in full light, in the full sunshine, in full contradiction: I had thought that we might reopen the great universities in which all doctrines could be taught, and all theories and opinions freely expressed and brought to light. I was not afraid of contradiction. One of my honorable colleagues was saying to me yesterday: "You would not be worthy of the name of a man of science if you feared contradiction." I am not afraid of it, but on one condition. I repeat it, it is that it should be with equal arms, and in full light. (Applause from the Left.)

M. Annison-Duperron — You should not have excluded your adversaries. . . .

M. Paul Bert — That was not the case: they wanted to hold minds in close restriction; they were constantly watching; they endeavored that no contradiction should reach them, because it was the best way to prepare men for future events. (Good! from the Left.)

This was not very secretly done. I do not speak of political meetings, where one is more prudent; but of certain books, in

which it is said: "Our duty is to make use of the poor limited liberties left to us, to prepare a large nucleus of Christian generations, strongly steeped in faith, devoted to the cause of the Church, knowing true liberty thoroughly, in order that the future, at least, should be better than the present, and that a bright spring should succeed to our interminable winter!" (Good! from the Right.)

M. de la Biliais—We want to think of the future, as a consolation for the present.

M. Paul Bert—That is their intention, which can be summed up in one word: They are invoking the name of liberty, so as to prepare slavery!" (Good! good! from the Centre and Left.)

I ask you, a political assembly, if, when such doctrines are taught, if, when they are taught secretly, you can disinterest yourselves to the point of disarming the State of that poor and insufficient right it will have to make inquiries, by questioning pupils whether those doctrines did not prevent them from acquiring, at least, some positive knowledge?

I ask you, if, when some men have refused to submit to the laws of the State by refusing to show their statutes, so as to obtain its authorization. . . . . .

Voice from the Right—They have not been asked to present them.

M. Paul Bert—Do you mean to say, that it belongs to the Government to ask for the statutes of a secret society? That is a strange doctrine.

Can you deny to the Government the right of refusing to those who wish to teach the youth, the possibility of doing what I have just pointed out? (Noise from the Right.)

What you want is a deaf Government, an impotent Government, an incapable Government: governmental nihilism, governmental abdication. (Exclamations from the Right.)

Well, we shall not consent to that abdication; and as long as a breath of life remains in us, we shall fight to maintain for the Nation that it should be sovereign at home, and receive orders from nobody! (Interruptions from the Right.)

M. de Baudry d'Asson—You will not be alone to fight, M. Paul

Bert, I tell you; there is Catholic France behind you, do not forget it!

M. Paul Bert — These Gentlemen are eager, I believe, for a homage which I am quite disposed to pay to them. I well know that when the call to arms was made at the frontier, when the foot of the enemy trampled the soil of fatherland, you were found there. . . .

Voice from the Right — Yes! yes! we were!

M. Paul Bert — . . . If I had forgotten it, you have repeated it often enough for it to be remembered. (Good! good! from the Left).

M. Viette — They were not alone to defend fatherland! Every one took part in her defence!

M. Paul Bert — You were not the only ones who did it; and this does not signify anything for the past, except, perhaps, that your liberty of teaching has not yet borne all its fruits. (Good! from the Left).

I believe that I have demonstrated that you must restore to the State a prerogative belonging to it, and the return of which will not excite even a legitimate surprise; I believe I have demonstrated that there are dangerous doctrines, and that you have the right to prevent those who teach them, and did not set themselves aright towards the State, from teaching them to the national youth. That is the whole thesis of the law.

Now, before descending from this tribune, will you allow me, I do not say an advice,— you would not permit it — but a kind of warning? That warning I took the liberty of giving when the discussion of the law presented by the honorable M. Wadington took place; it has not been listened to. I said then to many of its adversaries, that they would have done wisely to have accepted that law.

If accepted, said I, it may be considered as a transaction.

M. de Baudry d'Asson — We do not want any transaction. (Exclamations from the Center and Left).

M. Paul Bert — It is not to you I wish to give advice, M. de Baudry d'Asson!

M. de Baudry d'Asson — You are right; because I would not accept it!

The Speaker — Then do not interrupt. (Good! from the Left.)

M. Paul Bert—If it is voted, said I then, that law will constitute a kind of transactional ground from which it will be difficult to come out, and what you call the liberty of teaching will be singularly protected by that law voted by Republican Chambers. If you reject it, your triumph will not be of long duration. We are soon to have new elections; senatorial elections are shortly to re-establish harmony between the two Chambers; and this time it will not be a question merely of this modest collation of degrees: you may lose much for not having been willing to give up a little!

A Member of the Right —We may also gain much!

M. Paul Bert — I have not been listened to; I shall not be listened to, if I repeat the same warning in about the same terms.

Gentlemen, the law submitted to you may be summed up by this formula, given by the illustrious Leibnitz: "They have no right to liberty, who want to use it for teaching hate and the overthrow of all liberties." (Good! from the Center and Left).

That is the meaning of the actual scheme of law.

And I say to you now: Take care! for if the proposed law be rejected,— if intolerance of sects, if jesuitical and ultramontane intrigues continue to excite public feelings, it might happen some day, in another Chamber may be, that more audacious men,— surely, less prudent, doubtless, less wise, I am inclined to believe,

. . .

M. Bourgeois — More logical!

M. Paul Bert — But more logical, as it is suggested to me, will ask for the translation into legislative and administrative language of the formula of the above-named great philosopher: "Tolerance itself is not due to intolerant people!" (Renewed applause from Left and Center. The orator on resuming his seat was warmly congratulated by a great number of his colleagues.)

SPEECH

Delivered at the Sitting of the 5th of July, 1879.

Discussion of Article 7.*

M. Paul Bert — Gentlemen: I am called to the tribune by the word of the honorable orator,† who just left it. He said a minute ago, "that one would not dare to mention again that series of lies — that is his expression — which for several centuries have been heaped up around the history of the Jesuits!" . . .

M. Keller — That word was not addressed to you personally.

From the Left — We hope not!

M. Paul Bert — The idea never entered my mind that such a word could have been meant for me personally!

From the Left and Center — Good! good!

M. Paul Bert — If I had been called to this tribune by an expression which goes somewhat beyond the limits of parliamentary language, I would deceive the Chamber,— and I should try in vain to do that, because it would not let itself be taken in, — if I said that my intervention is absolutely improvised and unforeseen. (The orator shows them a pile of books and documents. Laughs of approbation from the Left and Center.) No: I come here to fulfill a promise I made in the course of a first speech, at the beginning of the discussion on the project of the law in question.

*Article 7 reads as follows: "No one is permitted to take an active part in public or free teaching, nor in the direction of a teaching institution, of whatever order it may be, who belongs to an unrecognized religious congregation."

† M. Keller.

I said, that in Article 7, liberty of teaching is not interfered with. . . .

From the Right — Oh! oh!

M. Paul Bert — I said that the actual law consecrates the principle of liberty of teaching; but, that it however adds to it conditions of incapacity, to preliminary conditions of exclusion,— wisely instituted by the laws of 1850 and 1875, for all those who wish to keep even a private school,— that it adds to those regulations a new condition.

I said, that it adds to the class of those people to whom it is not allowed to open schools, to whom it is not allowed to teach, the members of non-acknowledged congregations; and that it places them *ut singuli*, according to the expression of our honorable reporter, M. Spuller.

This principle being stated, I said,— and I have not been interrupted, and this thesis has been accepted,— I said that it is only a question of proving that such exclusion is right; and I added that this proof could be brought out effectively only when the discussion on Article 7 should take place; and that it would be inopportune to try and give it in the course of the general discussion.

From the Left and Center — It is true! good!

M. Paul Bert — Now the discussion of Art. 7 is opened.

It is, therefore, a question actually to know if the Minister of Public Instruction, if the Government, has had good reasons to request that the members of non-authorized congregations should no longer take an active part in teaching; and especially if that exclusion is justified towards the celebrated Order of Jesuits, which is particularly in view by public opinion, and around which — everybody acknowledges it — all other religious Orders are concentrating themselves; for they consider it now-a-day as their chief and master.

The Minister of Public Instruction, at the time of his first speech, brought to this tribune documents which have particularly struck and moved the Chamber. He has shown that the provisions stated by several orators tending to expose as dangerous the consequences of the teaching of history, the teaching of law,

and of everything touching the very foundation of our modern society,—he has clearly shown that those provisions were perfectly right; he did so by quoting to you several pages of books of history, which are used for teaching in all schools belonging to religious congregations.

The discussion took place on some points of detail. M. Keller endeavored to explain, "That the books of history in question were not the only ones used in the institutions directed by the Jesuits; that they represent a very small number of copies: and that it has been necessary to use a ladder to find a single one."

I shall not insist on this trifling matter; the Minister is, better than myself, in a situation to reply to that sort of argument. I shall not insist upon this order of particular facts, although it would be easy to put under your eyes several texts having a great analogy with those quoted by the Minister; but that would be falling into useless repetitions.

In my opinion, we must consider the question from a higher point of view.

Gentlemen, the teaching of history and all other teachings, are but a consequence of the general moral principles of those who teach them. What it is necessary to do to find out or to ascertain if the teaching of a certain body of men is dangerous and prejudicial to public morals, is not to find fault with some texts drawn from secondary works; no, we must go straight to the very books in which those men have recorded their feelings and thoughts. We can see, then, how they understand the principles of our society. We must study — skipping mere details — the very education they give, as it is said that therein lies their triumph; and that it is that education which is so strongly recommended to all mothers and fathers of families; we must seek out what relates not to the student, but to the man; what tends to make the man himself; that is to say, the principle and basis of morals.

Well, let us see how the Jesuits, in all times, from the organization of their Order until now — this very day included, — let us see how they understand those principles of morality; how they understand the great truths on which rests, not only modern

society, but the whole social world. (Applause from the Center and Left.)

One day, Mgr. Dupanloup, bishop of Orleans, eloquently said, from the tribune of the national Assembly: "People are dying through disobedience to the Decalogue — through not knowing the Decalogue." *

Let us see how the Jesuits know and understand the Decalogue; let us see what they are doing with those eternal principles of morality in respect of family, of property, of sworn faith . . . . . (Renewed applause from the Left and Center,) . . . . . of human life; and, when we have seen all that, it will be little interesting to know how they name those principles in the records of history.

What the Jesuits were about two hundred years ago, I do not think it is necessary to recall. In an immortal pamphlet which has attained a place in history, and is classed among the masterworks of French literature, Pascal has described them sufficiently. We may all recall to mind those quotations of facts, as really repulsive as they are ridiculous.

We all know the composition of their morality: mental restrictions, unlawful compensations, philosophical doubts and sins, probabilism and amphibology! Everybody is aware how moral principles were shaken and set aside; how free will was enervated and weakened: this was, in fact, all that was necessary to deliver man into the hands of a director!

A Member of the Right — This is a pretty old story!

M. Paul Bert — I hear a justified interruption. I am told, "This is very old." Yes, that is old; as far back as 1656, when the "Provinciales" were published; before 1662, the year of Pascal's death. It is indeed very ancient; therefore I shall not inquire of any of the old casuists; I shall ask nothing of Tambourin, Decastille, Filliucius, Emmanuel Sa, Suarez, Sanchez, or Escobar, the most celebrated of all.

A Member of the Left — You were going to forget him.

M. Paul Bert — I shall not ask what they thought about morals:

* This quotation has been taken as an epigraph by an anonymous Jesuit, who published in Arras a vulgar pamphlet, entitled, *The Scruples of Paul Bert*. But the scoundrel deems it witty and smart to put in my mouth the words of M. Dupanloup. *Ob uno disce omnes.*

you would reply: "Times are different nowaday; morals of our age are not the same as those of the sixteenth and the beginning of the seventeenth centuries."

However, Gentlemen, we read in the "History of the Jesuits" a celebrated word, whose origin seems not to be well known; for my honorable friend, M. Spuller, having repeated after others that it came from the celebrated and unfortunate General Ricci, was very much blamed for it; yes, it appears that it was not a Jesuit who said, "*Sint ut sunt, aut not sint*," but Pope Clement XIII. But, at least, it is a Jesuit who said, long after Pascal's time, "*Sumus tales guales.*" Was he not talking the truth?

Let us see, then, what the Jesuits were a hundred years after Pascal.

At that moment, in 1762, a great event happened in the history of French Jesuits.

The adventures of several Orders, which had called public attention to them — I use a mild word, in order to avoid interruption at this time — had determined Parliament to look into their case, and in 1762, a celebrated decree requested the King for their proscription.

A Member of the Right — Louis XV.

M. Paul Bert — If you refuse to Louis XV. royal homage, surely I shall not substitute myself to you. (Laughter and applause from the Left.)

That decree asked the King to take immediate steps against men whose "Doctrines would tend to destroy natural law, that rule of morality which God himself has implanted in the heart of man; and consequently to break all ties of civil society, by authorizing theft, lying, perjury, the most criminal impurity, and, generally, all passions and crimes, by teaching secret compensation, equivocation, mental restrictions, probabilism and philosophical sin; to destroy all human feelings among men, by authorizing murder and parricide; to annihilate royal authority," etc. . . . . .

Then come accusations having no interest for us, as we are not a theological assembly.

Such solemn and terrible formulas, issued by the first constituted body France possessed, then the Parliament, debating with united

Chambers, cannot be alleged, as it has been said so often in regard of Pascal's pamphlet, to be the expression of a mean and narrow religious passion.

Besides, the Parliament took necessary care; for to its decree we find annexed, in considerable number, documents which are precisely the basis and proof of the accusation brought forth by Parliament against the Order of Jesuits.

Those documents, no one can deny their true origin, nobody ever denied it. It has been said that they were gathered for the purpose. Such an objection is made by all culprits about the charges made against them. Generally, one seeks in the acts of the defendant what is particularly criminal. This was done by the Parliament.

Here is, Gentlemen, the volume containing them. It is bulky, and printed in very small type; consequently it does not relate the particular doctrine of one Jesuit only; it is not a single individual taken from the rank *cum superiorum permissu;* it is not a man taken at random who expresses himself in these pages; it is the whole Order of Jesuits!

And here must be made a general observation, and I will take the liberty to present it, relative to the last quotations brought out by M. Keller.

Every party has its fanatics; but, when following a method formerly in use by the National Assembly — and which seems not to have formed many pupils here, I can not say why — according to an ancient method, our opponents draw from Republican books or newspapers quotations exaggerating the doctrine of our party, they have not the right to compare these extracts with those we make in the inverse sense from your books and newspapers.

And here is the reason: because those quotations are secured from persons placed in the front rank, who adhere to extreme principles and sometimes shoot at the body of the troops; those quotations do not represent the opinion of the majority of our Republican party; they are not accepted by it; but are the result of the exaggeration and ardor of certain reckless sharp-shooters, or the doings of certain personalities a little out of rank, of outcasts!

On your side, it is otherwise: the more excessive the quotations, the more violent the expressions, the more absolute or aggressive the doctrines, so much as to raise sometimes public indignation, the nearer we approach the bulk of your army; the nearer we are the center of those doctrines; the more certain we are of meeting, behind the work of those soldiers who publish nothing without the authorization of their General, the approbation of their supreme chief, often more violent than themselves, I mean the Pope. (Good! good! from the Center and Left).

That is the difference, and you must always bear it in mind.

Let us come back to the Jesuits.

The main charges for which they have been sentenced by the Parliament of Paris, are eighteen in number. Several are of no interest to us; it does not matter much to us to know in what they were guilty at the point of view of religion, or of idolatry.

But the moral question is treated under various titles; the first of them all is entitled "Probabilism." You all know what that means. In fact, the quotations, which I am going to have the honor of presenting to your appreciation, will recall it to you in a very precise manner.

This is how a Jesuit, who was at the same time a cardinal, has explained probabilism. He says:

"In general, either in matter of faith or in matter of morals, (Please notice, Gentlemen, that this is the formula of Papal infallibility," *vel fide, vel moribus*),—"In general, either in matter of faith or in matter of morals, it is allowed to everyone to follow whatever opinion is directly less probable and less certain, although the contrary opinion be more probable and more sure, and is considered as such. But it is necessary to restrict the proposition, and understand it of an opinion whose practical probability is certain for the party who acts." (Laughter from the Left).

Consequently, when a man finds himself in doubt, and is obliged to choose between two solutions for any act of his life, he is perfectly free to follow the worst, even though it be criminal, on condition that there is a practical probability which seems to his mind certain — and useful. (Noise from the Right).

Several Members of the Right — That is theology!

M. Paul Bert — Gentlemen, I am told: "This is theology!"

. . . .

A Member of the Right — Badly interpreted theology!

M. Paul Bert — I should know very little indeed of those to whom I speak if I had not expected this interruption!

But, as long as this seems to you to be theology, we are going to see what are the applications of that principle, on a ground which is not theological.

"It is asked," says Gregoire of Valence, "if a judge may, without respect of persons, give sentence according to the interests of a friend, in favor of a probability indistinctly applicable to one opinion or another, when a point of law divides the attorneys. I say: first, if the judge thinks that both opinions are equally probable, he may righteously, in order to favor his friend, give sentence according to the opinion which authorizes the claim of his friend. Moreover, he might, even in view of being of service to his friend, judge sometimes according to the one opinion, and sometimes to the contrary. (Laughter and applause from the Left).

A Member of the Left — It is the height of the art!

M. Haentjens — It is the doctrine of validations and invalidations. (Approving laughter from the Right).

M. Paul Bert — You complained enough about it, that you should not approve the formula. But I must proceed, for the end is precious: "providing, however, no scandal results from his decision." (Ah! ah! from the Left). That is to say, for instance, in the particular case named a while ago by M. Keller, "providing no telegraphic messages are found later on." (Laughter and applause from the Left).

M. Louis le Provost de Launay — The telegrams of the Government of the National Defence are very interesting!

The Speaker — You can read them at your leisure, but do not interrupt!

M. Louis le Provost de Launay — A short time ago the Left were interrupting as they pleased.

The Speaker — I request of you, for the second time, not to interrupt.

M. Paul Bert — So much for judgments, which are not a theological matter; but they certainly are a particular matter.

This is now for single personalities:

"Is it allowed to follow sometimes a probable opinion and sometimes another, on the same matter? It is probable, for instance, that a certain tax has been unjustly levied; it is also probable that it may have been justly imposed. Now may I, who have been appointed by the king to collect that tax, insist upon it? And in another instance, because I am a merchant, may I defraud the State secretly of that duty?

"Likewise, it is probable that one may be compensated with money for the loss of one's reputation; it is also probable that one cannot be so compensated.

"Then, may I, whose reputation has been injured, compel the offender to indemnify me with money; and in another instance may I, supposing I have injured the reputation of another, decline to indemnify him pecuniarily for the loss of his reputation?"

Now, what says the learned Jesuit?

"I assert that one can righteously, in such a case, act one way or the other, as he deems best to his interests." (Laughter from the Left).

Gentlemen, I must proceed very quickly; for if you are not convinced, I have some other quotations at your disposal.

A Member of the Right—We have read the "*Provinciales.*"

M. Paul Bert—I will add only,—as I was just told that I was talking about theology and not instruction,—a quotation relative to teaching:

"Doctors and professors occupying chairs of universities, are not obliged to teach the feelings which seem to them most probable; for those sentiments are often least accepted and least authorized, and would cause scandal; and it would be imposing a heavy burden on teachers if they were under the obligation of teaching what seems to them most probable."

I consequently fear, Mr. Minister, that you will have much trouble, even with the help of your inspectors, in ascertaining what is taught by the Jesuits, especially touching the opinions which seem most probable to the teachers of those institutions.

After the great chapter on Probabilism, which is full of extracts very similar to those I just read, comes another on philosophical sin. It is not less interesting, nor less detailed. I shall pick up only one:

"Although we all know," (it is Father Lacroix who wrote this in 1757),—"although we all know this natural law, that a lie is forbidden in principle, as also that it is not generally allowed to kill anybody of one's own authority; however, such circumstances may occur where we think forcibly that these things are permitted at the present moment. It is thus that Cassien, a holy and learned man, . . . and others have thought, that the official lie is sometimes permitted, . . . It is thus, according to the narrative of Vasquez, that a vulgar man thought that he could honestly and piously act in such a manner, by turning over a sick person, thereby to cause his earlier death, and so deliver him from excruciating pains. . . . It is thus, that another man, as relates Sarasa in his book, 'The Art of Ever Rejoicing,'" . . . that recalls to memory the confraternity of "Smilings," which has been instituted in Vaucluse, I believe; but seriously, I call to this passage the attention of those who are so jealous, and with reason, of the rights of fathers of families. "It is thus that another man, through his zeal for the glory of God and for the salvation of souls, baptized the children of Moors brought to him by their parents, and killed them immediately afterwards, in order that their salvation might be certain, and for fear that being returned to their parents they would not be taught the faith of the Catholic Church." (Oh! oh!)

Let us pass over quickly, Gentlemen. You see, I skip hundreds of pages at a time; and I will quote a little at random, as the honorable M. Keller said just now. (Laughter from the Left.)

I come to the title of Falsehood and Perjury. Is it theology again?

"It is asked, what precautions are to be taken in the use of amphibology? I answer: 1, that, without rejecting what has been said in the preceding question, in order to well understand amphibology, we must distinguish two different manners, according to which persons of judgment can make use of it. The first consists in having the intention of expressing, outwardly, but *material*

words; so, for greater safety, when one begins to say: "I swear!" one must add *mentally* "that to-day," and proceed then aloud: "I did not do this, or that." Because all is true, in this manner." (Renewed laughter from the Left.)

In 1719, Father Cassendi declared that he had found a new way of never telling a lie, and at the same time of hiding the truth! (Laughter from the Center and Left.) And this not in keeping silence, as the old Casuists used to do, but by speaking out:

"This manner consists in speaking but *materially*, and pronouncing words without the intention of giving them any meaning, as if they really had no meaning whatever. Just as when I pronounce, for instance, the word: 'Clictri.'

"If supposing once that this word, 'I do not know, I have not done it,' or other similar statements, do not signify anything in a case where there is obligation to speak and at the same time to hide the heart's secret, it is easily explained how, not only there is not, but even there cannot exist, any lie in the mind of him who speaks; because no one lies but by words meaning the opposite of what is really in the mind.

"It is allowed to make use of merely material oaths, every time that, besides a grave motive which compels one to use some words without signification, there is yet a better reason for taking an oath in a merely material form.

"He who swears materially, does not swear; because, in order to really swear, it is requisite to use this word, 'I swear,' as mentally significative of the oath. Therefore, he who uses this word 'I swear,' as not being significant, does not really swear." (Ironical applause from the Left.)

You see, Gentlemen, that the doctrine of the Jesuits is improved; this was in full in the eighteenth century, fifty years after Pascal's time!

Oh, there is a great deal more like it; but to bring it out, I should have to quote the whole volume; for the Rev. Fathers were not contented with presenting these general principles. The priests may have to deal sometimes with dull-minded people, unable to apply such rule to particular cases. Well, Fathers Buzembaum and Lacroix teach them by giving examples:

"Thus, as the word *Gallus* in Latin, may signify in French a rooster, or a Frenchman, if one asked, while talking in the latter language, if I have killed a Frenchman,—though I have really killed one,—I may outwardly answer 'No,' while meaning a 'rooster.' (Exclamations and laughter from the Left.)

"Likewise the verb *esse* in Latin means to be, or to eat. Therefore, when I am asked if Titus is at home, I may outwardly answer 'No,' though he is in, while mentally meaning that he is not eating." (Oh! oh! from the Left.— Laughter from the Right.)

I don't very well understand what makes you laugh; I would feel obliged by having the explanation. I do not think you mean by so doing to show disrespect to the Order of the Society of Jesus! . . .

The above quotation is from Buzembaum, in 1757; that is ten years after the publication of Montesquieu's "L'Esprit des Lois," (The Spirit of Law.)

I pass on. The following is about secret compensation:

"One does not sin against justice," says Longuet, "and one is not obliged to make restitution when one receives money for committing a murder, for striking somebody, or for any other act against justice.

"When a man is so miserably situated, and another man is in such a wealthy situation that the latter is obliged to help the former, he who is poor may take secretly, in a good way, the property of the rich man, without incurring sin, or being compelled to make restitution."

"A wife can, even against her husband's wish, contract or give alms, or make valid donations, and spend at her pleasure, either for gambling or other honest recreations, or for her fancies and dress."

"Servants or others do not sin by taking something, presuming of their master's intention, because they feel convinced through the light of reason, that their master would not like to be unjust."

"A son does not sin when he steals something from his father, against the latter's desire, in order to help others who are in need."

"If children believe, in good faith, that their father would have given them what they stole from him, if they had dared to ask him

for it, they are not held to make restitution, as such may be the custom among people of the same situation."

Secret compensation, the crime of theft, has very much occupied the good Fathers, at the point of view of the amount required to constitute a mortal sin. The value of that sin,—the only one compelling to restitution,—has singularly varied from century to century; that is easy to understand, as the value of money changes (Laughter from the Left); besides, appreciations may vary, and they do vary in fact, according to the state of fortune of the person who suffers the theft. So many casuists, so many different amounts; every one considering the case from his own point of view. We shall see presently, how casuists of the nineteenth century have resolved the question.

Father Buzembaum, the last one quoted,—and for that reason he has concentrated, while perfecting it, the whole doctrine,—went further yet: "For he who is very poor may take all that is necessary for him, etc.; and what a man can do for himself, he can do also for another who is in extreme poverty." That is the doctrine of the Jesuits.

But this is better yet: "A poor man in this case, could even kill him who would prevent him from taking the thing needful to him, as one can kill a thief for taking away something of great importance, at least needful, or who retains it by violence" according to what it was said above.

Thus, here is organized theft—and murder, when the one suffering the theft has the notion to be opposed to it,—under the insufficient pretext that he does not want to give it up.

You seem to become indignant at hearing that one could find in such a thesis an excuse for homicide. Well, I have quotations far more direct to read to you, and you will see presently that they are of a particular interest, for we find again their very principle in the 19th century:

"Can a son," it is said there, "wish for the death of his father, in order to enjoy his inheritance? Can a mother wish for the death of her daughter, so as not to be obliged any longer to feed and give her a dowry?

"If you only desire or learn with joy such events, the answer is

easy; as it is allowed to desire these things and to receive them, because you do not rejoice at the evil of others, but at the good which comes to you." (Exclamations and laughter from the Left).

The question is put further, even to inquiring if a son is permitted to kill his father, when under proscription. (Noise from the Left). But if I moreover told you that Father John De Castillo affirms that this may be possible, you would answer me, that such things were said in 1641, and that everything has changed since then; let us then proceed to more recent times.

Now the following happened in the 18th century: Father George Gobat asks himself, "If it is permitted to a son to rejoice at the murder of his own father, which he has committed himself while in a state of intoxication, on account of the riches coming to him by the consequent inheritance." And he answers "yes," with the following ingenious explanations:

"As it is supposed that the parricide has been innocently committed, through lack of reason, caused by drunkenness, and that there had been no premeditation; that besides, the parricide has for aim the acquirement of great riches, an effect which is good, or at least certainly not bad; it follows, consequently, that the above doctrine, which may seem paradoxical, is true in speculation, although dangerous in practice." (Hearty laughter from the Left.)

It would be necessary to quote the whole book, Gentlemen; and there are but two things to do in presence of those quotations: either deny their existence, which is impossible; or else feel a deep impression of indignation and disgust! (That's true! good! from the Left).

One gets thoroughly sick at such reading. I however, perused the book all through: it is truly a swamp, in which it is impossible to step anywhere on a solid bottom. Everything in it is mud and filth! (Numerous signs of approval).

We see, with astonishment, that a great number of those doctrines and quotations have not been written by mere theologians, casuists, or philosophers addressing grown-up men, but they have been written by teachers, and have been seized on the

copy-books of pupils in the Jesuits' colleges — of Amiens and Sens, for instance.

These are, Gentlemen, the morals of the Jesuits at the end of the 18th century. I shall not conclude yet, because you would tell me: "Well that occurred one hundred years ago! The *sumus tales quales* is perhaps out of fashion, that doctrine may have changed; it reaches nearer the Gospel; the Decalogue does not receive any more such violations from those who present themselves to us as its most authorized defenders.

Let us, then, skip another century: let us come to present times, and see the writing of those who give themselves the mission of teaching youth, and from whom the Minister for Public Instruction, the Government, and, I think, the Chamber, will take away that mission; of which we believe them to be unworthy!

Well, here is a *Compendium*, dated 1834.

Perhaps you are going to find it too old; but I confess that I have not got any more recent at hand. It however has since had a great many further editions.

Rev. Father Moullet, in his *Compendium theologiæ moralis, etc. . . . cum superiorum permissu*, (Laughter from the Left) Fribourg, 1834:

"It is doubted," says he, "whether it is allowed to kill a man who wants to appropriate to himself a material property of great value, but not necessary however to his existence.

"The affirmative opinion seems the most probable. (Interruptions and laughter from the Right).

"The reason is, that charity does not compel us, in order to save our life, or the life of our neighbor, to lose a notable part of our wealth."

M. de la Bassetiere — That is the theory of all property-owners against thieves!

M. Rene Goblet, State Secretary for Justice Department — It is not the theory of the Penal Code!

M. Louis Le Provost de Launay — You don't want us, then, to protect ourselves against house-breakers? . . .

M. Paul Bert — I request simply that the Stenographer register these approbative interruptions! (Good! good! from the Left).

But, as this is causing discussion on this side (the Right), we are going to talk on something else:

On page 221, it is asked, to what is a man held who gives his oath in a sham manner, with intention to deceive?

Answer: "He is held to do nothing, relative to religion, because of not having taken a true oath" (exclamations and laughter from the Left); "but he is held by justice to fulfill what he has sworn in a sham and deceitful manner."

I firmly believe it, for it is not likely that tribunals would be satisfied with the answer, that one is held to do nothing for the only reason that one has not taken a true oath. (Noise from the Right).

M. Louis Le Provost de Launay—What of those who took an oath of fidelity to the Empire? (Noise).

M. Paul Bert—Gentlemen, those theories are very often troublesome for the pupils of the Rev. Fathers; here is an example: One day, at an examination for doctorship, in a philosophical composition on the universality of moral laws, a pupil of the Jesuits found himself in great doubt how to answer this general thesis: "Theft is forbidden." And he made this objection: "Why, then, did God allow the Hebrews on leaving Egypt, to take along with them everything they could carry? Was not this a theft? Did not the property taken belong to Pharaoh's subjects?"

Such was the objection of an honest young man. But hold on; be sure, his good education has sheltered him from his own conscience: "Doubtless, but all those things first belonged to God, who is sovereign Master of the whole world. And he can, at his will, take back from some what he has given them, so that others may enjoy it." (Exclamations and laughter).

Do you wish to hear of another nature of acts, which constitutes a whole long chapter of the big book I have before my eyes, and on which subject I however could not make any quotation, because there is none which could be decently made in public.

A Member of the Left—Not even in Latin?

M. Paul Bert—Not even in Latin! (Oh! oh!—Laughter).

The Count of Douville-Maillefen—Ask, then, for the secret committee! (Noise).

M. Paul Bert — It is true that Rev. Father Moullet, in his Manual of Morality, finds out the way to turn the difficulty, by using words which can be read aloud:

"If some one," says he, page 126, "takes delight in keeping up guilty relations with a married woman, not because she is beautiful" (hearty laughter from the Center and Left); "abstracting the circumstance of marriage, such a delectation does not imply the crime of adultery." (Laughter and applause from the Left).

"This is," says he, "a very ancient opinion of St. Liguori."

Mind, Rev. Father Liguori was beatified by the Holy Catholic Church! (Laughter.)

M. de la Bassetiere — St. Alphonsus of Liguori was not a Jesuit! (Exclamations from the Left.)

M. Paul Bert — Well, then, I will quote to you some facts from Jesuits. In fact, Gentlemen, this point does not much matter, and we shall have to talk in a few moments about this argument which consists in saying: "That man is not a Jesuit!" . . .

M. de la Bassetiere — I interrupted you merely to ascertain a simple fact; but not at all with the intention to say that his doctrine is not the Catholic Doctrine. The Catholic Church has approved St. Alphonsus of Liguori's doctrines, therefore we have no right to declare that it is not the true doctrine. We are Catholics, and shall so remain to the very end. (Noisy exclamations and applause, and ironical laughter from the Left and Center).

Several Members of the Left — Then it is your doctrine?

M. de la Bassetiere — I demand to speak!

A Member — This is an argument in favor of divorce!

M. Paul Bert — Here is, Gentlemen, *The Christian Instructions for Young Men and Young Girls*, with approbation of Mgrs. the Archbishops and Bishops of Lyons, Besançon, Bordeaux and Nancy, published at Lyons in 1840, by the Rev. Father Humbert.

Well, Gentlemen, it is absolutely impossible for me to make quotations from it. I leave them at the disposal of those who wish. (Numerous interruptions.)

From various sides — Read! read!

The Viscount of Belizal — No insinuations! read!

M. Paul Bert — Well, as you are insisting, I will quote only the most presentable part. (Laughter.)

A Member — In Latin?

M. Haentjens — Say it in Greek!

M. Paul Bert — Here is first a part which is addressed to young girls. The Rev. Father says to young maidens: "How can you have the leniency to allow frequent kisses, liberties, and familiar and too free carresses? What does your conscience tell you on all this?"

Further, speaking to young boys, and in order to lead them away from drunkenness, he relates to them the adventure of a certain Cyrillus, "who, coming out of a saloon, went so far in the open street as to strike his own mother, who was pregnant!" *

"The woman made such violent efforts to protect herself, that she had a miscarriage. That unfortunate drunkard attempted another day the violation of one of his sisters, who preferred being stabbed by her unworthy brother, rather than consent to such a crime. Their father, hearing a noise, hurried in; but his madly furious son then dipped his hands in the blood of the author of his life by cutting his throat; he stabbed also another of his sisters, who came in and took upon her her father's defence."

It is certain that the Rev. Father does not present this Cyrillus as a model; but, finally, I ask you, if it is not really abominable to put into the hands of young boys and girls — for it is a book given to both young boys and young girls — narratives and examples of facts of such a monstrous nature,— I would say filthy, if this word could be said from this tribune,— it is a book of instruction, a book of morality, a school-reader. . . .

* In order not to raise the indignation of the Chamber too much, and fearing to be interrupted, I attenuated this odious text. I reestablish it here in all its entirety. "The young man used to frequent saloons. One day, coming out of such a place of debauchery, in a thorough state of drunkenness, he had the imprudence (impudence, in several editions) *to attack his own mother, who was pregnant, solicited her to a shameful crime, and resolved to use violence upon her. The woman had therefrom a miscarriage.*" But there are many other abominations in this little book, which seems written by a man taken with erotomania!

M. de la Bassetiere — It is not, and it cannot be a book of instruction.* (Exclamations from the Left.)

From the Left — What is it, then?

The Viscount of Belizal — Where was it printed?

M. Paul Bert — Gentlemen, as I am told that these quotations are not taken from educational books, I am going to read to you some which I picked out of a book of instruction.

And, as one could think and say,— and it was in fact so said but a short time ago — that all those quotations were of a philosophical nature, and could not be applied to children themselves, I am going to take up a book which is intended for young children, even the youngest. . . .

M. Haentjens — Was the book just cited presented to children?

M. Paul Bert — . . . And you will easily recognize therein the monstrous doctrines of the Jesuits of the last century, doctrines which a moment ago raised the indignation of the members of the Left of the Chamber, and which caused the laughter of the deputies on the other side:

"Can one act according to a probable opinion?" asks M. Marotte, Vicar-general of the Bishop of Verdun, in his abridged (in form of Catechism) "Complete Course of Christian Instruction, for the Use of Christian schools." (4th edition.)

I think that is a book of instruction! It dates from 1870; and so I hope you will not say that these doctrines are of another age!

The Viscount of Belizal — It is not written by a Jesuit: a Jesuit can not be a Vicar-general!

The Speaker — Nobody is telling you that it is written by a Jesuit. It is told to you that it is a book of Instruction. (Laughter from the Left.)

From the Left — Yes, he is a Jesuit!

* In order to answer M. de la Bassetiere's interruption, I will say that Rev. Father Humbert's book was, and is yet widely spread in congregational, and even in lay schools. (See my Report on the Law of Primary Instruction, Paris, 1880).

This book, which is intended for little children, and of which the Bishop of Nimes undertook the defence, in a mandamus posterior to my speech, was published in the course of the XVIIIth Century; but it has undergone, since then, in the present century, 172 editions, of which 32 were posterior to 1840. Now it is a question of a book worth about five cents, and consequently, each edition has had several thousands of copies!

M. de la Bassetiere — Then it must be now well understood, that it is not the Jesuits alone, but the whole Catholic Church that you are attacking! (Exclamations from the Left.) Please allow me: we have authority to believe . . . (Noise.)

From the Left — Let the orator speak!

The Speaker — M. de la Bassetiere, your name is set down; you may speak immediately after M. Bert; I therefore request you not to interrupt, so that I may likewise request silence when it will be your turn to speak at the tribune.

The Count of Maille — But the calumny remains!

The Speaker — M. de Maille, I call you to order! You cannot talk about calumny when the first page of this book has just been read to you textually!

The Count of Maille—I demand to speak!

The Speaker—You may speak at the end of the sitting.

M. Paul Bert—Gentlemen, the question is to know if the odious doctrines of morality exposed by Pascal, and condemned by the Parliament of Paris, remain the Jesuits' doctrine; if they are actually taught by the Jesuits! (That's it! Good! from the Left.)

The Viscount of Kermenguy — I was educated by the Jesuits; my sons also; and I affirm, sir, that neither my teachers, nor my sons' teachers, have ever presented to any of us the books which you are talking about. (Noise from the Left.)

M. Paul Bert—Well, now, almost all the orators on this side of the Chamber [the Right] who came to this tribune, said to us that there was no distinction to be made any longer between Jesuits, the other religious congregations, or even the secular clergy; they said to us,— and this is the truth,— that the whole Catholic world adheres to Jesuitical ideas and doctrines; consequently we have the right to declare, when we find those doctrines expressed by a member of a congregation, whatever it may be, or a member of the secular clergy, we have the right to declare: "Those doctrines are jesuitical doctrines," without needing to look for anything else! (Approbation from the Left.)

The Viscount of Belizal — It is the Catholic Church itself you are attacking!

M. Paul Bert—I quoted some Jesuits to you. Ah! I know very

well that they actually have the great shrewdness to conceal themselves behind members of other religious congregations, behind members of the secular clergy, and even behind laymen; but when it is a question of a book having official authorization approved by Bishops or the Pope, one can openly declare that this book professes the Jesuitical doctrines, and I have the right to take hold of it.

M. de la Bassetiere — Then, it is the whole Church you wish to proscribe.

The Viscount of Belizal — At least, give us the name of the writer.

The Speaker—But the orator has already named him.

From the Left and Center—Read! Read on!

M. Paul Bert—"Question: Can one act according to a probable conscience?" etc. . . .

"Answer: In what concerns faith, the validity of sacraments,"—I pass rapidly over this first part, because you might tell me again I am talking theology,—" outside these circumstances, that is to say, outside the question of faith, one can, without committing sin, follow the more probable opinion, though the less certain; by so acting, it is acting with prudence." (Laughter.)

Gentlemen, do you not recognize here the judge's theory of "probabilism," quoted to you a short time ago, referring to that merchant who was willing to pay the tax, because, as a merchant, he did not consider it justly levied, but who, however, exacted the payment of it as Collector for the Treasury, because, after all, the tax might be just, and that in the latter case he was drawing profit out of it. (Good! from the Left.)

Please notice, it is no longer a question of a work of 1750; this refers to a book printed in 1870.

I read further, page 181:

"Question: Is it allowed to wish for a bad action, or to rejoice about it, on account of the advantage resulting from it?

"Answer: It is never allowed to wish for a bad action, or to rejoice about it, on account of the advantage which is the result of it. . . . But . . ."

There is in all this, Gentlemen, a remarkable similarity to one

of the ancient quotations. I read to you a short time ago a coincidence very peculiar indeed, if M. Marotte is not a Jesuit. Listen:

"But it is allowed to rejoice of an advantage, although it may result from an evil. For instance, a son may receive with pleasure the inheritance he has secured through the murder of his father." (Exclamations from the Left and Center.)

A Member from the Center—Who approved this book?

M. Albert Jolly—Some bishops!

M. Paul Bert—This book you can buy; its seventh or eighth edition has been published; which is a proof that the approbation of our Monseigneurs has brought good luck to it, and that it might not deserve the marks of indignation it excites on certain benches. (Laughter from the Left.)

A Member of the Right—Not at all!

M. Paul Bert—Ah! you are not indignant. The stenographer will take it down. (Laughter and applause from the Left.)

I proceed further, page 259:

"Question: Is it sometimes allowed to kill an innocent person?

"Answer: It is never allowed to kill directly an innocent person, even in view of the public interest (exclamations from the Left); but, one may, in a grave and urgent necessity, do an action good in itself, although it may cause the death of one or several innocent persons, providing he who does this action has only in view the good which can result from it, and turns aside with all his power from the bad effect he fears."

That is the doctrine of secret intention, of which we have hundreds of samples in the large volume published by the Parliament.

I was telling you a moment ago, that the Jesuit Fathers have tried to ascertain at what precise point theft begins, regarding the value of things.

M. Marotte feels the same embarassment; but, as he writes in 1870, he knows the value of money, and he explains:

"That depends," says he, "not only upon the value of the thing stolen, but also upon the wealth and situation of the person to whom the thing belongs, the damage that person suffers, etc. . . . So, a theft of ten francs, made to the prejudice even of the richest person, is always a mortal sin; but towards poor people, working-

men, those who have a bare competency, a theft of one franc, two or three francs, four or five francs, is a mortal sin also."

Thus, till ten francs it is not . . .

A Member of the Right—Mortal sin!

M. Paul Bert— . . . Mortal sin, is to steal from rich persons! Page 266:

"Question. Must one always be considered as guilty of theft, when he takes the property of his neighbor?"

That is a question plain and explicit, put by M. Marotte, Vicar-general, to a child of the Christian schools, regarding the precept of the Decalogue: "Thou shalt not steal!"

Well, now! the boy will likely first answer: "No!" The first direction given to that young mind towards this question: "Must one always be considered as guilty of theft, when he takes away the property of his neighbor?"—the dominative and guiding thought, is: "No!"

"It may happen that the one from whom the property is stolen has no right to be opposed to the theft; which takes place, for instance, when the one who takes what belongs to his neighbor is in extreme need; and when he takes only what he badly needs; or when he takes it secretly, as a compensation, not being able to secure in a different way what is owed him by right of justice." (Exclamations from the Left and Center). I fear I shall annoy the Chamber with all these quotations.

From the Left and Center—No! no! Speak! speak!

M. Paul Bert—I of course pass over many chapters, but I believe that I am pointing out the most interesting . . .

From the Left—We will get up a book of them!

M. Paul Bert—Page 276: "Question. Can one be sometimes dispensed from the obligation of making restitution when the theft is committed?

"Ans. Yes!

"Question. What are the cases which may allow the post-ponement of restitution?

"Ans. They are:

"1. Physical powerlessness; that is to say, the bad financial state of the debtor, who has nothing of his own, or who is in extreme need.

"2. Moral powerlessness, in other words, the state in which the debtor is unable to make restitution without falling from his justly acquired rank, (exclamations from the Left); without falling or dragging his family into misery, or exposing himself to the danger of losing his reputation." (Renewed exclamations from the Left).

Other facts are of but little interest compared with these great and solemn principles, so remarkably engraven in a work devoted to youth! (Noise from the Right).

M. Louis Le Provost de Launay — This book is the work of a madman.*

M. Paul Bert — You are very harsh, Gentlemen, for our Mgrs. the Bishops and Archbishops who approved it, are Louis, Bishop of Verdun, Andre, Bishop of Strasbourg, etc., etc.

I do not think they would have approved the work of a madman, nor a book which would not teach pure doctrines! That book Gentlemen, is pure doctrine!

M. Laroche Joubert — The Bishops did not read it before they approved it.

M. Paul Bert — This book is spread everywhere; it is the abridgment of a complete course of Christian instruction, where you will find these maxims developed with a luxury of preambles which recalls exactly the big book from which I quoted some extracts a few minutes ago.

M. Albert Joly — There is a new edition of it printed in 1874, it is more than that one, and is intended for schools also!

M. Haentjens — Is it expurgated? (Hearty laughter — ironical applause on several benches of the Left).

M. Paul Bert — The word "expurgated" might seem a little severe for some members on this side (the Right); but, finally, I can give satisfaction to the request which has just been made. The last edition *is* expurgated; some passages which I quoted are

* I did not know at that moment that Marotte's *Catechism* and *Christian Instruction* were the official books for religious education in our *Normal Primary Schools*. Recently, the Director of one of our Colleges (La Reunion), having opposed the introduction of this odious little book, the Chaplain made a complaint on the subject, and the Director was discharged.

blotted out, particularly that where it is a question of the son who rejoices at the murder of his father.

Here is the edition of 1870, which was taught for a long time in the public schools of Paris; it is the fourth edition. And, if I could make some abstracts for you from the various catechisms which are taught in our country schools, I would easily show you that exactly the same doctrines are taught.

With regard to those questions, I wish to justify myself from a reproach which was made against me the other day. I was told that I made hypotheses; I was told that nobody could ever think that the teaching of Catholic universities have gone so far astray; that it would become, in reality, an art of getting around the civil and penal code, without running the risk of meeting its disagreeable effects.

I have here,—he is not a Jesuit, that's true; it is the Count Anatole de Segur,—I have here some extracts from a pamphlet recently published, in 1872, by the *Religious Weekly* of the diocese of Montpellier, a pamphlet which is honored with the approval of Mgr. the Bishop of Montpellier; those extracts, therefore, can be considered as representing also the pure doctrines, or at least — for there must be made a distinction, you saw it, between speculation and practice — as representing some directions which, although disagreeable on the side of speculation, are well worth at least being put into practice.

The Count of Segur troubles his mind very much about the prudent steps taken by the Civil Code in order to prevent legacies and gifts being received by persons who have no lawful right to be heirs; that is to say, persons who are not considered regular citizens. He explains very openly, with a truly juridicial art,—that is the proof, Mr. Minister, that the pupils of Catholic Colleges will not be perplexed before the professors of the University,—The Count of Segur explains in a very particular manner, with a thoroughly juridicial science, the delicate points of what he calls "the points of contact of charitable and religious liberty — another and new kind of liberty!—with civil legislation."

"Those points once known," says he, "it will be easy to avoid them." That is very simple; in fact, it should be done so at first; he gives good advice for all possible cases.

"Many pious persons," said he, "who wish to give a part of their fortune to a good purpose, are prevented from doing so by the strictness of this principle. They would like to choose the mediums of their liberalities; to unite the spiritual alm to their material gifts; and they do not care to intrust to other hands but those of pious persons the execution of their charitable desires."

In other words, those persons would like to overturn the law; but how? And then follows, I repeat, a series of practical directions, very useful to those who are disturbed by the law.

Next, M. de Segur adds, with a charming simplicity:

". . . By means of these perfectly legitimate and moderate ways of very easy use, the benefactors of the poor can harmonize respect of the severe rules of the law with their preferences and the accomplishment of their pious intentions."

I stop here, Gentlemen, I have made you acquainted with some samples of what teaching is in the hands of those men who were presented to you at this tribune, and everywhere, as the safe guardians of the purest doctrine and of the highest morality. It is constantly said, that Society is running away with the revolutionary torrent; that they are the salvation anchor; that it is necessary to be fastened to them in order to be on solid ground, or to keep afloat.

Now, Gentlemen, you know what ideas, what principles of morality, used to guide them in olden times, and which lead them now-a-days,— ideas which are very easy for them to transfer from the domain of speculation into the field of practice! (Signs of approbation from the Left).

If I were speaking of the pedagogical art with which those principles are impressed, there would be much to say, and interesting facts also; but you would reply, "that I was criticising private schools, not only at the point of view of morality, but mainly regarding their pedagogical value; and that I was praising the University schools, by contrast with the jesuitical and congregational colleges."

I would be told that such a proceeding could not be in place at the French tribune. That is exactly what I think; and consequently, I shall not follow an example of the same kind, but in the inverse

way to what was given to me by our adversaries. (Renewed approbation from the Center and Left.)

This is, Gentlemen, for the boys' instruction.

But for the last century or so, a quite particular and new event has taken place. The girls' education, until the Revolution, was almost exclusively in the hands of religious congregations. Those congregations were giving a peculiar teaching, which, at the point of view of instruction, so to speak, was generally very weak, except only in a few famous and renowned private institutions. But from the documents of that time, the young girls received then a very good education, at the point of view of morality.

Great care was taken in the convents not to bring up the young girls like future nuns; those young girls who should return into society and become mothers of families. The mystic sentiment was not excited in them. Truly religious feelings were impressed upon them, but of an elevated nature, in harmony with the purest morality. The result of this was, that social tranquility, that calm in the bosom of the family of which the disappearance is sometimes regretted in the present time.

But, since the beginning of last century,—since the famous tale of Abbot Girard and Miss la Cadiere,—since the more celebrated adventure of Mary Alascoque, the Jesuits have endeavored to take hold of the education of young girls. They could not do it directly. Their regulations forbad it to them. So they raised up a great number of congregations which have no similarity to the old congregations known by our fathers and mothers.

In fact, most of them bear the titles of the "Sacred Heart of Jesus," the "Sacred Heart of Mary," etc., which shows they are of recent institution.

The Jesuitical congregations are trying, in opposition to the old and wise congregations, to impress the young girls' minds with an excessive and peculiar mysticism; for these intellectual congregations are united with what might be called the most material organization!

From the Left — That's it! Good!

M. Paul Bert—Formerly, great care was taken as to dogmatical questions, legendary narratives and religious stories, and to pass

rapidly over certain delicate circumstances on which it is not very good to awaken the minds of children, especially of young girls; to-day it seems, on the contrary, that a certain pleasure is taken to call their attention to them, by means of intellectual processes which are the most strange and dangerous imaginable. I do not know of a book more interesting to read, in relation to this, than the "Meditation on the Life and Mysteries of Our Lord Jesus Christ, according to St. Ignace's method." You see, it is truly a question of Jesuits, and after the renowned exercises of the founder of the Order of Jesuits. These books are intended for young girls; consequently, I do not get out of our subject. This book, for instance, is specially dedicated to young ladies, and is taught in the colleges of the Sacred Heart of Jesus.

While perusing it, Gentlemen, it is astonishing to see, at the point of view of the subjects studied and the manner of studying them, what really terrible means are used in the bosom of those institutions, which all belong to non-authorized congregations. At the point of view of the method itself, it is an exaggeration of mysticism which is tending to placing the young person absolutely outside of the world, her exterior friends and the temporal impressions which surround her. She should keep in an obscure and quiet place; she should live apart, mentally speaking, from all worldly things, concentrate her mind on a particular point of a religious story, fix her senses and soul upon that point with an absolute attention. In the course of her meditations there are preludes, preliminary prayers, a combination of ways and proceedings, through which she forcibly becomes perfectly isolated from the rest of the world.

And then,— what is very strange indeed,— that young girl, in this state of semi-somnambulism, almost asleep, her whole mind far off from this world, is all of a sudden called upon to exercise all her senses, one after another, and apply them to the only object on which her mind was fixed, and which is there present and living before her eyes.

There are, in this, Gentlemen, I do not hesitate to say, all the required conditions of a criminally prepared and organized hallucination. (Good! Good! from the Left).

After each one of those meditations comes what is called the application of the senses; that is, the sight, hearing, smell, taste, finally touch. So much for the method!

Think, gentlemen, how dangerous this is. Those who have invented it, or rather those who have put it into practice, not only for nuns, as wished by St. Ignace, but for young girls who are expected soon to become wives and mothers of families, living in society, such are truly guilty and responsible for so many insane cases. And, if those who write such books do not feel the consequence of what they have done, I send them back to the treatise, "Young Ladies' Education," by Fenelon. They will find in it severe and profitable lessons! (Interruptions from the Right).

M. de la Bassetiere — This book is simply intended for future nuns!

M. Paul Bert — I beg your pardon, M. de la Bassetiere. It is not a question of nuns, but of young girls. There are two editions.

The Speaker (addressing the Right) — I will remark to you, Gentlemen, that we have given to this debate such an extension and ampleness, that all of your orators have been able to review all historical, political, and religious subjects; the same liberty must be given to your opponents, so that it may be maintained presently for you. (Good). Please continue, M. Paul Bert.

M. Paul Bert — M. de la Bassetiere says to me, that this book is merely intended for nuns. I wish to reply to that point — for the argument, without being largely extended, might seem to have a little value. I say, that M. de la Bassetiere is mistaken: there are two editions of this book, one dedicated to nuns — which I have not, as it is of no value to me; I remain in the domain of instruction — and the other devoted to young girls; and you certainly are better able than I to know that this book is of daily use in the colleges of the Sacred Heart of Jesus, and many other congregational schools.

That is for the method! I was not embarrassed until now, because I did not go beyond the limits of what might be called the application of Medicine to Pedagogy; but I should be very embarrassed to speak on the subjects which are treated in those medita-.

tions, and to quote some of them textually. Nevertheless they must be pointed out. Now, do you know to what the attention of young girls is called? There is the Annunciation, for instance. There are a dozen meditations on the Annunciation of the Holy Pregnancy, and its consequences! (Laughter from the Left). There are three or four meditations on the hidden life of Jesus in his mother's bosom; meditations on which the young girl is requested not only to reflect, but to place herself in a state to interrogate, by each one of her senses, the actual position of Jesus. (Indignant exclamations from Left and Center).

I could read them.

And after the Annunciation, there is the Visitation. The same order of questions is followed. One even goes farther. . . .

M. Margaine — And what of the explanation of the Holy Ghost's operation?

M. Paul Bert — Here are two full pages of those meditations: first, it is the contemplation; next, the application of the senses on the Circumcision! (Exclamations and laughter. Read!)

The 33d contemplation on the Circumcision shows three preludes, three points, one colloquy, and one resolution. (Laughter).

M. de la Bassetiere — It is very easy to dress up all that; but the ground work cannot be true!

M. Paul Bert — M. de la Bassetiere reproaches me that I dress all this: I am going, therefore, to read it out quite naked. (Good! good! from the Left. Read! read!)

M. du Bodan — That is not possible; there are ladies and young girls in the galleries!

M. Paul Bert — Our honorable and respected colleagne, M. du Bodan, says to me, we are not here alone; but that there are ladies and young persons in the galleries. . . .

M. Faure — Please wait until the galleries are empty.

M. Paul Bert — I recognize it; and from that comes all my hesitation. But you will acknowledge that it is a very strange situation, to be standing at a French tribune, before an assembly of men, before an audience of adults, without daring to read what is done and written, to be read, meditated, and thought over in

private by a young lady, M. du Bodan! (Warm approbation and prolonged applause from the Center and Left).

M. de la Bassetiere — I ask very respectfully from Mr. President (Noise).

The Speaker — You will speak soon! you cannot be allowed to constantly interrupt!

M. Paul Bert — You reproach us for dressing up the citations, and you do not consent that we read them aloud!

From the Left — Read! read!

M. Paul Bert — We will read, and we shall make justice from all this!

M. de la Bassetiere — I ask for the title of the work, the writer's name, and the date of the edition.

The Speaker — M. de la Bassetiere . . . (Interruption from the Left).

A Member of the Left — There are no explanations to be given! (Noise).

The Speaker — Allow me, Gentlemen, I am the only judge on the question to know if explanations should be given or not.

M. de la Bassetiere asks a question, which was answered about fifteen minutes ago.

M. de la Bassetiere — I did not hear it!

The Speaker — But I think it useful to repeat it: M. de la Bassetiere asks for the writer's name, the title of the work, and the date of its publication.

M. Paul Bert, will you please answer. (Interruptions and noise).

Please, Gentlemen, listen to the answer!

M. Paul Bert — We will ask for a special sitting for interruptions! (Laughter from the Left).

I am reading:

"Meditation according to St. Ignace's Method on the Life and Mysteries of our Lord Jesus Christ—4 volumes in 12mo, published by Lecoffre, 1867, with a dedication to St. Joseph, and another to the Young Ladies of the Sacred Heart of Jesus."

M. de Bosredon — By whom has this book been approved?

M. Paul Bert — It is used everywhere; it has had I do not know how many editions!

M. de la Bassetiere — Who is the author?

M. Paul Bert — There is no name on it. (Exclamations from the Right).

M. de la Bassetiere — We protest . . . (Noise) . . . If there is not the name of the writer . . . (Noise) . . . If there is not the name of the writer . . . (To order!)

The Speaker — I shall be compelled to call you to order, M. de la Bassetiere! Please do not interrupt!

M. de la Bassetiere — I say, if there is no name of the author, and if there is no episcopal approval, this book is perfectly worthless. (Good! from the Right — Exclamations from the Left).

M. Paul Bert — Worthless? that's very hard for a book which is used in houses of religious education!

M. de la Bassetiere — That is just what ought to be proved!

M. Paul Bert — It is its seventh or eighth edition!

From the Right — That is not a reason.

A Member of the Right — The "Assommoir" has had more than fifty editions!

M. Paul Bert — It was published by Lecoffre. You can make against this publisher the accusation of heresy, and settle the matter with him.

But, in fact, those various meditations, according to the method of St. Ignace, seldom bears an author's name; many of them are approved, others do not mention any approval.

Here is a catalogue full of that kind of works, they are all conceived in the same spirit; all of them devote a meditation to each one of those so dangerous particular cases which I pointed out a little while ago. I do not mean to say that I have not chosen the more favorable quotations for the thesis I am sustaining. The last one I wished to read to you is more complete, perhaps, than the others, but I remember that all are very dangerous.

It is not so much the diabolical, shameful and abominable details which the author has entered upon, which are of such a nature as to upset the imagination of young girls; but it is the situation itself in which they are placed when inviting them to

contemplate such scenes, and after the preliminary prayer to apply to it all their senses; first, the sight; second, the hearing; third, the taste; fourth, the smell; fifth, the touch. . . .

Here are, in particular, the dispositions which should be brought to the study of the Circumcision. (Noise from the Right).

The Count Jean de Colbert-Laplace — I ask for the doors to be closed.

M. Laroche-Joubert — The secret committee should be requested.

M. Paul Bert — I ask of you permission not to read it. In fact, I gave some directions; every one can look through the book, at the National Library, for instance, unless some are protesting, and they again would say, that it is in order to put a dress on those quotations that I do not care to read them!

The Count of Perrochel — There is on it neither the writer's name nor the episcopal approval.

M. Paul Bert — Do you wish for some books which have the episcopal approval? Here they are.

But now I declare, it is not a question of school books! (Ah! ah! from the Right).

It is a question of books given to the pupils as prizes (Laughter from the Left), of reading books; it is a question of those small books which are presented to the Christian youth, and approved by Mgr. the Bishop of Limoges!

Here is an extract from this Christian and moral library. Very truly, if only a popular almanac had published the first story of this book — I do not mean to say the commission on peddling would not let it go, many others are passed over without a word — but the general public attorneys would have stopped it.

From the Right — Read it!

M. Paul Bert — It is "Charity's Triumph," by M. Baudran, at Limoges; Bardon Brothers, publishers.

There is no date on it.

This "Triumph" consists in a dialogue between Eustachius, Mayor of Alexandria, one of the most violent persecutors of religion, and a virgin named Theodora.

The Mayor summoned the Virgin to sacrifice to false gods; the Virgin declined, and the Mayor then said to her:

"There is a decree from Emperors which ordains that virgins who refuse to sacrifice to the gods shall be exposed in a shameful place. . . ."

M. Margaine — He was a prefect of the moral order! (Laughter from the Left).

M. Paul Bert—Then follows a dialogue between the Virgin, who shows a legitimate anxiety and makes proof of a pretty complete sort of special instruction, and the Mayor, who, after a most disagreeable insistance, sentences the young girl to be sent to a place of debauchery. The rakes immediately crowd round her; but Jesus Christ comes and protects her, and she is thereby drawn out from the situation, to her great honor, by a young man, who puts himself in her place and dresses her with his clothes.

The Count Jean de Colbert-Laplace — Read entirely!

From Various Seats—No; that will do!

The Speaker—There are limits to curiosity!

M. Paul Bert—As you are insisting, I can read a few lines more. You will see what is written for young children, with approval of the Bishop of Limoges! (Laughter.)

Theodora says, "The only grace I ask from you, is that nobody will attempt my pudicity."

The Mayor answered her: "Sacrifice to the gods, or else in a short time you will have lost that virginity of which you are so proud."

From the Left and Center—That's enough! That's enough!

M. Edouard Lockroy—And you say that this is approved by a Bishop?

M. Paul Bert — We have yet more recent documents, and which belong to the class of school books. Such are dictations made by a vicar in a girl's normal school. Of those dictations, for instance, I can name only the titles:

"Are there different ways of sinning against purity?"

"Sin against purity can be committed in five different ways: by acts, words, looks, desires and thoughts."

Until there, that's all right, although it seems very singular that

a young vicar be appointed to dictate to young girls, sixteen to twenty years old, the number and nature of the various ways of sinning against purity. (Approbative laughter from the Left.)

But he is not satisfied with this entirely ritual enumeration, for he then says:

"One can sin by actions in three principal ways." (Noisy exclamations from the Left.)

Several Members — That is too bad!

The Baron Etienne de Ladoucette — This must be the story of a priest afflicted with a sick mind, of whom it was spoken in Nancy, and who was excluded from the teaching board.

M. Paul Bert — Gentlemen, I wish you to excuse me for having entered into so many sickening details, and brought out to light things which have never been mentioned at a French tribune. But it is not my fault; it is the fault of those who say and declare with boldness that, *urbi et orbi*, they are the guardians of all morality! (Applause from the Center and Left.)

Now, then, what are they doing with morality? You have seen a few examples of it. You may imagine what their oral education can be, from what you know of their written teaching.

You see, Gentlemen, what they did for boys and what they tried to do for girls. It is now your duty to see if you will not stop this strange teaching,—not to say something worse,—and to stop it by voting Article 7.

Let us put aside all this shame and ignominy. Let us look at the question from another point of view; let us look upon it from the political standpoint. It was already pointed out in this debate, or rather it was only slightly touched.

In order to understand properly the political side of this question, for what concerns Jesuits particularly, and consequently religious congregations who have gathered around them, it is necessary to see under which circumstances this famous Order was formed, and how those conditions are singularly similar to those in which we ourselves are actually placed.

The Jesuit's Society dates from 1534. The Reformation was just born; a wind of free thought was blowing over the West of Europe. The treaty of Nuremberg had taken Germany away from

the Papacy, by securing liberty of worship. France itself was threatened. Calvin had just published his first book. Then appeared Ignace de Loyola.

He was neither an ordinary nor a middling man; he soon understood that, besides the old monastic orders, wearing various costumes, devoted to particular works, there was room for a special militia, which would have for its only purpose to fight against free thought, and to bring back to obedience to the Pope the nations who were straying away from him. As a military troop, absolute and passive obedience was indispensable to this militia.

He then founded the Society of Jesus. And this society answered such an urgent emergency, that, as soon as it was founded, it had an outbreak which was similar to an explosion! Less than a hundred years later, the Jesuits had spread all over the world, ruling, acting and also irritating public opinion, so much so that the old hymn was sung:

"Gubernant spirituale,
Gubernant et temporale,
Gubernant omnia male."

With the chorus:

"Oros, qui cum Jesu itis,
Non ite cum Jesuitis!"

Already, in that time, they had excited first the jealousy, next the passion, and even sometimes the indignation of the people.

However, their work was done; they had torn from heresy France, Belgium, Spain, Portugal, Italy, and Savoy already threatened.

What more could they do?

Germany, England and Scandinavian countries were lost to Catholic faith!

In France, Spain and Italy, on the contrary, the Catholic faith had nothing more to fear. After the "Renaissance" time in Latin countries, liberty of conscience and political liberty had both been wrecked.

Some almighty kings, anointed in the name of the Lord, elected by divine right, and professing the Catholic faith as a State religion, swore to fulfill the laws of the Catholic Church, of which

they declared themselves the devoted sons, and swore to exterminate all heretics: those kings had offered a safe guarantee to Rome and the Catholic Church. Thence, almost nothing was left for the Jesuits to do, either in political or in temporal matters. Popes used to deal directly with Kings, and those two powers mutually granted to one another certain privileges; on the temporal ground on one side, and on the spiritual on the other.

In the midst of all that, the Jesuits occupied themselves with instruction, business and traffic. You know it did them no good. They were very busy with confession, causists; they presented the rulers of the people with that "velvet way" leading to Heaven of which Escobar spoke. But with all that, they lost a great deal of their importance.

Assuredly, some eminent individuals of their Order were not without having, thanks to their situation as kings' confessors, an influence on the fate of the people; but the mass of the Society abandoned the merely political platform.

However, among their struggles about casuistics or dogmas, they did not forget the principal purpose for which they were instituted. On one hand, the attack was made again by them against the least show of free thought, and Port Royal fell under their blows. On the other hand, they endeavored to make triumphant everywhere, and in every instance, the power of the Papacy.

So, whilst kings sometimes prosecuted them, sometimes protected them, according to the caprice of a favorite or mistress,—like Maintenon, Pompadour, or Pombal,—Popes alone, thankful and foreseeing, always sustained their best soldiers. So that, it was with a great and earnest sorrow that Clement XIV. suppressed this congregation, understanding very well that the Order of Jesuits was a militia entirely devoted to the interest of the Holy See and the Catholic Church.

Then came the Revolution.

The Revolution did not proclaim, did not create a State religion, as the "Renaissance" had done. After a short period of persecution, it rendered free all religions, all worship; but by so doing, it just enabled the Jesuits to appear again and take back their authority over the Catholic world.

In fact, the danger was the same for the Papacy as in the sixteenth century. It was then no longer Protestantism which threatened, but Rationalism. Civil power had finally become secularized. The Church may be sometimes consulted, but she will never command again. Was this Revolution without appeal, without hope, for them? The Jesuits, who contributed to save the Papacy in the great crisis of the Reformation, are going to place themselves at the head of the new movement to save the Papacy from the Revolution. But they will ask reward for their assistance, and the whole of Catholicism will have to pay dearly for it, too! . . .

It is thus, that after having passed over a long period, during which they performed no more important part than other religious Orders, they have succeeded, since the Revolution, in making predominant their particular opinions in the Church, to such an extent that these opinions have become regular articles of faith.

At the same time while they were fighting for the Pope and the Church; at the same time that the old Society of Jesus — and the following word must be interpreted in a military sense, for in taking it Loyola remembered the heroic acts of his youth,—was taking arms again for the Pope's service, they stated their conditions: they compelled the whole Catholic world to consider as true their private opinions, and forced it to accept the dogmas of the Immaculate Conception and of Papal Infallibility (speaking *ex-cathedra*). (Good! good! from the Left and Center).

Yes, Gentlemen, the Society of Jesus had for mission to draw back the modern world from its tendency towards free thought! First, they hope to bring back, repentant, to the Pope and the Church, their beloved, rich, and powerful daughter, France, who has separated herself from them. This Society has for mission, to put their hands upon our society in the name of the Church; not in a brutal manner, far from that, for the Pope is not intending to command directly Princes and Republics; but the Society of Jesus acts in such a manner that those Kings and Republics shall give back of themselves to Catholicism, to the Church, her lost power and authority.

And it is for that reason, in this country and neighboring lands,

a supreme struggle is now taking place; it is why Art. 7 is only a momentary event, or rather the first act of this great fight!

From the Right—That is full of promise!

M. Paul Bert—Truly speaking, there is not,—allow me this comparison, which shall be very short,—there is not only the Catholic religion thus placed face to face with the secular governments; another religion, just as important at the point of view of the number of its members, shows the same spectacle. The Mussulmans also, are seeing their chiefs, who formerly used to unite together the civil and religious powers, progressively compelled under the pressure of circumstances to give preeminence to the civil element, and to become secularized more and more. The Christians, the Jews themselves, are allowed to take part in their councils.

What happens then? As you see in our country, the Catholic Church fights against the civil power, with the Society of Jesus at her head; so you see sultans, beys, emperors, khedives, forced to act against the secret religious opposition of their people, which is excited and led by that congregation of Khouans from which Ignace de Loyola has borrowed his motto.

And it is a strange fact, to which it is interesting to call the attention of historians, namely, in his supreme constitution, Ignace has copied, neither the ancient monastical orders, nor the work of Dominique or François d'Assise, but the Khouans' organization, with its passive obedience, its provincials, its powerful general!

It can be be read in Ignace de Loyola's history, the narrative of a long and curious conversation of Ignace with a Moor in the Aragon mountains, from which it is allowable to think that the founder of the Jesuits was acquainted with the laws of the Order of Khouans.*

I beg your pardon, Gentlemen, for this detailed statement. Nevertheless, there is a very strange coincidence. (Speak! Speak!)

You know the formula of the Company of Jesus' Order: "Thou shalt be in the hand of thy director like a corpse."

*Or of some other similar Arabic religious Orders, for Mohammedan creeds of that kind are very numerous.

A Member—Yes! "*Perinde ac cadaver!*"

M. Paul Bert—Well! Khouans have a chief, a regular general, similar to that of the Jesuits, and the Khouans' formula is: "Thou shalt be in the hand of thy chief, like a corpse in the hand of the washer of the dead, who turns and turns it again at his will."

Now there is, in all the South Mediterranean countries, a constant fight between the various Mohammedan governments and the Khouans; the same kind of struggle which is now commencing in France between the Government, the Catholics and the Jesuits. And by a strange and very queer coincidence, we Frenchmen who have to govern on the northern side of the Mediterranean Sea a Catholic population, and on the southern side Mahommedan people — we fight here against the Jesuits about Art. 7, and over there with the Khouans, in the Aurès. (Approbation from the Left.)

Gentlemen, you should think deeply over the nature of the fight which is started against lay governments by the Society of Jesus, marching in front of and commanding the Catholic Church. It is not a political disturbance; it is a social war! And we must acknowledge the fact, that it is not the Catholic Church who has made the declaration of war. She may consider herself provoked by the lowliness to which governments want to reduce her; for she affirms that, from divine investitute and authority, she has the right to command them. She simply requests them to let her take the place she was occupying, and which she believes to be legitimately due to her.

M. Keller was saying a little while ago, and he was undoubtedly right: "The Church does not deal with politics; the Jesuits do not interfere with politics." That is true; but under conditions that that you understand the word "politics" in its narrowest sense. No; the Jesuits are neither monarchists nor republicans. And, I believe, even if they had to choose, they would prefer to turn republicans; for in a republic there is no king claiming a share of the power; and they could, if circumstances were favorable to them, monopolize the whole of it.

So, in the countries where they have been able to become absolute masters, in South America, what have they done? They took

great care not to help the chance of a king. They founded several Republics.

Likewise, they will accept very gladly the French Republic, providing they can get hold of her, and make use of her as the humble servant of the Catholic Church.

How can they reach that point? It is no longer a question here of a king, and a confessor alone would not be sufficient. It is the *nation* which is sovereign; then they have to win the whole nation. The middle classes are directing the nation; it is necessary, therefore, to get hold of them. And then, they have displayed their marvellous and habitual resources.

They said to themselves, The world always follows the stronger, or at least he who seems to be strongest, and says so. And then, with the help of a thousand diverse causes, with the secret complicity of governments, (which greatly mistake in these matters in believing they can make use of the Jesuits; while, on the contrary, the Jesuits are making use of and laughing at them, and are at the same time taking advantage of the complicity of governments,) the fear of the middle classes after our civil war, the fright of souls after the disasters to our fatherland, and the support of the clergy all gathered around them, which brought to them the help of its power, its authority, and even of the income from worship and of the inexhaustible resources which they know so well to secure among the faithful; taking advantage of all these means and all these circumstances, they have constituted the clerical party.

Please notice that I take great care not to say the Catholic party.

For there is an important distinction to be made. Catholics are citizens who simply ask from civil society to be protected in the free exercise of their faith. (That's it!) The Clerical party requests that civil society be subjected to the dogmas of Catholicism! (Applause from the Left and Center.) It is quite a different thing.

Well, they have constituted the clerical party! This party is everywhere and nowhere; it is the fairy to which the honorable M. Keller was alluding, and whom one meets everywhere without being able to seize her anywhere! This party is in the adminis-

tration, the magistracy, the army, civil society, and in all branches of human activity, and at every degree of the social hierarchy. This party constitutes a body which is at the same time spread all over the world regarding its members, but as regards its interests powerfully concentrated. Why? Because its numerous members hold together, help each other, depend upon one another, protect and push forward one another; because the French middle class were convinced and made to believe, that if they wished to succeed in the various branches of the administration, (Good! That's it!) to obtain high grades in the army, to shine in the first ranks of the magistracy or diplomacy, and secure, as physician or lawyer, a good patronage at the first start; and even in commerce to have a blessed store, with plentiful capital and good customers, it was sufficient to join the clerical party, and so show it respect, help and affection. And the Society of Jesus alone is responsible for these new merits.

That is what was suggested to the French middle classes; and when they were convinced of the fact, it had to be acknowledged that it was unfortunately the truth. (Applause).

And so the Jesuits hoped that the French nation was finally in their hands, and that with her they had secured the power.

However, such triumphs could not satisfy the Company of Jesus. It would have been very imprudent to trust much in such troops. Men who join an army for mere interest, do not deserve to be depended upon. Who knows, if the pole towards which they gravitate happened to change, doubtless, as a faithful compass, they would follow it, and change also?

After having secured possession of those who fight through, and for interest, they wanted to possess those also who fight through and for faith: in order to form them, they must not try to take hold of grown-up men, but of young children. To obtain that result, they had to secure the right of teaching youth. I now come back to my subject, Gentlemen, so as to get through with it sooner.

The Count of Maille — Yes, you are entering upon the subject! (Noise from the Left).

M. Paul Bert — Yes, the Jesuits then decided to capture the

education of youth, because it is only by taking the child when very young, by keeping him from childhood in close watch and under severe rule, that he can be impressed with feelings of long duration. This is the only way they could be certain that the child would not escape them, and that they could retain him incorporated, fanaticized, unassailable by temptations.

Then what did they? With an admirable shrewdness, the very first day the clerical party became master in the Assembly of 1850, they asked for the liberty of primary and secondary teaching.

The second time, twenty years later, when the clerical party became master once more, in the Assembly of 1871, it completed its work by obtaining the liberty of superior instruction. And so at all degrees soldiers were prepared, the true soldiers of Loyola's army. (Good! good.)

For me, here is where lies the danger; it is on this ground that we must fight, without truce or rest. What France does fear, what she struggles against, is the impression upon the mind of the young generations of the doctrine of the Society of Jesus, which is the domination of the whole civil world by the clergy. For, if they ever could take hold of the public power, national liberty would soon be suppressed, and it would be all over with what is dearest to us! . . .

The danger lies there!

It is in order to remove it that the Minister of Public Instruction laid before us his scheme of law, and that the Chamber will vote it by an immense majority.

Politics were spoken of. No, have no fear. It is not on the political ground, in its narrowest sense, that the question has to be put.

The Jesuits, through the clerical party, which is their banner and their means of action, have committed a great political error, —let them allow me to say so, with all the respect due to their skillfulness. (Smiles). . . . That they have unfortunately tied themselves to a party whose name is not very popular, you will be obliged to acknowledge, and even I could say, without offending you, this party arouses somewhat—it is a prejudice perhaps — the popular wrath, the passion of universal suffrage!

They committed this supreme mistake. That party has gone to nothing. The danger is no longer on that side; it is on the side of the future; the greatest danger is to see them becoming republicans! (Applause from the Left and Center).

The danger for the future is to see them give up a dangerous alliance, break off from the old monarchy, and throw away that old government which was used by them as a mark, as a sign, before the populace.

Now, Gentlemen, it is sufficient for us to have unmasked beforehand those intrigues, to have pointed them out to the generous-hearted and wise French people. We may be tranquil; never in a country like ours, never in this France, whose name is synonymous of frankness, no, never, will the Jesuits reign. (Repeated applause. The orator, when returning to his seat, was warmly congratulated by his colleagues, who received him with repeated salvos of applause.)

SPEECH

Delivered at the Sitting of the 7th of July, 1879.

SEQUEL TO THE DISCUSSION OF ARTICLE 7.

M. Paul Bert — I wish to speak on a personal matter.

The Speaker — M. Paul Bert is allowed to speak on a personal matter.

M. Paul Bert — Gentlemen, I asked to speak concerning a private fact. My name has been mentioned very often since the beginning of this sitting, and it appears that I look like a man overwhelmed with reproaches! . . .

Gentlemen, some one said that my quotations were inexact.

A Member of the Right — Mutilated!

M. Paul Bert — Yes, mutilated. I have been represented as a calumniator; and I must say, by the side of a certain Pascal, a well-known mathematician and philosopher (smiles on the Left and Center), I have been nailed to the pillory of history by the revengeful taunts of M. de la Bassetiere. (Laughter on the same seats).

I could get over it, Gentlemen, providing these so-called refutations were true denials, and that something else besides vague allegations had been brought forth.

What has been done? I quoted two kinds of texts: the ancient books gathered by order of the Parliament of Paris in 1762, collated by the Commissaries with the texts themselves, as mentioned in the said decree. (Noise from the Right.)

Gentlemen, you are very particular about the respect due to magistrates, and you are right; but please first respect your own magistracy, your antique parliament!

M. Louis Le Provost de Launay —Which you afterwards guil lotined!

M. Paul Bert — I never guillotined nor killed anybody, you know it quite well. (Laughter from the Left).

M. Louis Le Provost de Launay — Republicans like you did it, if you prefer.

M. Paul Bert — Gentlemen, no one could doubt the exactness of the text; now that is just what ought to have been done!

A Member of the Right — It was not said "inexact texts," but "mutilated texts."

M. Paul Bert — It is impossible for anybody to read at the tribune a whole big book, such as the decree of the Parliament!

M. Granier de Cassagnac — You have faithfully quoted the book; it is incontestible. Now, what is the value of the work? that is the question.

M. Paul Bert — That is logical, and the remark is correct. But, I repeat, it is not my business to do the work of M. de la Bassetiere; as proof of his saying, he should have brought here the original books themselves, and shown us that the abstracts compiled by the Commissaries of the Parliament are mulitated and inexact. This is what ought to have been done; now until you give proof to the contrary, I have the right to say that what was presented to the Parliament, what was authorized by the Parliament of Paris, is the real expression of the truth, and proves my assertions.

M. de Baudry d'Asson — There are 758 falsifications of that book!

M. Paul Bert — Find out one only, and bring it to us, that will do!

M. de Baudry d'Asson — I shall bring them to you.

M. Paul Bert — I pass to another kind of works, to the more recent books from which I quoted. Was there any doubt about them? Was the exactness of my quotations contested? Certainly, they are shortened, as you say, because I did not wish to read the whole book, but do you deny their exactness? No, nobody did so; and nobody can do so! Consequently, I have the right to say that I told the truth!

I have quoted M. Moullet, who, it seems, is not a Jesuit; but I would say, he at least deserves to be one, for he taught morals at the Jesuits' college in Fribourg, during several years, and his doctrine is certain to be the doctrine of the Jesuits. The book published by him in 1845 or 1846, bore the approval of the Bishop of Lausanne. Do you not think my quotation is good? Let us pass to something else. (Applause from the Left.)

As regards Abbot Marotte, the cause is heard, I believe?*

Numerous voices from the Center and Left — Yes! yes!

M. Paul Bert — A certain Baudran has been spoken of, who, it was said, deserved the title of Abbot; I did not know it; the book I quoted from did not give him that title.

What I said, and what could not be denied, is that M. Baudran, in this perfectly disgusting book, was backed by the approval of the Bishop of Limoges. This could not be denied, and is interesting to the cause.

Another fact was also pointed out. I found in the OFFICIAL JOURNAL an interruption which I had not heard; but I am not surprised, though I am usually very attentive. (Smiles). It was said that the Vicar of Nancy, who had dictated those obscenities (whose texts I have here, but I dare not read,) to high schools of young girls, was insane. That is easy to say; but the proof should be given. What is certain is, that for several months the said Vicar has taught those abominations, dictated those copy-books; that the school-mistress made complaints to the parson, and that they were without the slightest effect. What is certain is, that after a few months, the sitting of the departmental Council having taken place, the whole affair was brought before it, and in presence of the consequent scandal, the vicar was not interdicted, but simply sent away from that school. Where? We do not know anything about him; for it is very hard for the Minister of Justice himself to know exactly what becomes of the vicars and teachers of religious congregations who are sent on vacations on account of mischief! (Laughter and applause from the Left and Center).

* M. Albert Joly had just quoted to the Chamber a whole series of new abstracts from that odious "little Catechism of Marotte."

Regarding quotations, I will not accumulate them indefinitely. However, there are a few points, in the long series of cases of conscience I successively named before you, which had been forgotten by the Casuists I quoted; but which are very carefully dissected by modern Jesuits.

It is not a question here, as I was reproached regarding Rev. Father Humbert, of an author dead in 1771, but of a book reprinted in 1840; it is a question of principles taught in full in the 19th century, especially by the Rev. Father Gury. Perhaps some one will say that I am wrong again in calling him Rev. Father? All I know is, that he is a professor of the College of Rome, and that his "*Compendium Theologiæ Moralis*" was published in 1868, with the approval of several bishops!

I think he is sure to teach the true doctrines; for otherwise, the Papal thunderbolts near at hand would not fail to fall upon him!

I will read three quotations from him:

From the Left—"Are clerks held to obey the laws? Answer: Certainly not, when they are contrary to ecclesiastical immunities." *

So much for politics. That's very simple, it is a good general formula.

Now, let us see some particular cases. If the Minister of Finance was present, I do not know how he would look upon the following advices:

"Question: Is it a sin, and is one held to make restitution when prohibited goods are imported? Answer: As regards restitution, the answer is certainly negative, for it does not strictly cause any prejudice to the rights of anybody."

But here are more serious cases concerning the Minister of Justice, who is sitting over there, I see.

First, one question concerning every one at the point of view of general honesty:

"He who has promised to marry a rich young girl, of good health and character, is not held to fulfill his promise if she falls into poverty, sickness, or vice; because then it is a simple

*See above page (48.)

promise which does not oblige." (Exclamations and laughter from the Left.)

Next, about secret compensation, of which I quoted some examples from comparatively old casuists, dating one hundred years ago. I have shown that Abbot Marotte had entirely adopted and reproduced the whole of their doctrines. But the Honorable M. de la Rochefoucauld, Duke of Bisaccia, said: "The Abbot Marotte has nothing to do with us: he was no authority, he is not a Jesuit, and it is here only a question of Jesuits!" Then, it will be useful to demonstrate that modern Jesuits have exactly the same teaching as the ancient casuists. Here is a secret compensation, which is meant not only for a debt, but for a sentence before justice.

I shorten the quotation, as it is a very long one: it may be found on page 33 of the Cases of Conscience, by Gury; you can verify the text for yourselves:

"Tityre, a shepherd, was sentenced by the Court to a fine and to pay damages for having caused havoc in a field with his flock; but this unfortunate shepherd thinks the sentence is unrighteous."

The casuist asks himself, if Tityre may compensate himself for the damages he had to pay by helping himself to the property of the farmer who prosecuted him, and to the property of the Treasury, to get back the money he was fined. And he answers affirmatively, without hesitation! *

* There is an error here, which, in one of the preceding sittings, M. Granier de Cassagnac very courteously reproached me for. But I am rather inclined to believe that, when the interruption occurred, my colleague had no more Gury's text before his eyes than myself, else he would not have said that I was confounding the *thesis* with the *solution*; no, when I interrupted him by reading again my quotation and saying, "There are two Tityres," he should have answered: "Just so, there are two Tityres, the objects of two different cases, and you attributed to the first the solution which the casuist attributes to the second." For such is really the fault which a mistake of copy led me to commit. The reader will easily find out the truth, by reading in the present book the very text of the case. (See page 58.)

I repeat, the copyist made me attribute to Tityre I. condemned by Gury, the absolution which he grants to Tityre II. And now, please let the reader refer to the text and appreciate the way of acting of Tityre II. I should like to ask a jurist, whoever he may be, what he thinks of this authorization to compensate one's self; in other words, to steal cleverly and in secret, granted to a man unjustly sentenced? I admit, although the fact

So it is! It is sufficient, Gentlemen, simply to think that the sentence is unjust. (Laughter from the Left.)

A Voice from the Left—That is not serious!

M. Paul Bert—Those Gentlemen do not find this serious.

I will continue to make you laugh; for here is the story of a man named Pomponius, who, in order to revenge himself, tried to kill with a gun the goat of a certain Maurus; he missed the goat, but the cow of Marinus, who was browsing near by, was killed instead.

It is asked, to what reparation is Pomponius held? And Gury answers: "To nothing!" *

In fact, he is not held to make reparation on account of the goat he tried to kill, having missed her; and he is not held to make reparation to the owner of the cow which was killed, as he did not intend killing it. (Applause and hearty laughter from the Left and Center.)

M. Barodet—They have a great deal of wit.

M. Paul Bert—Let us see, Gentlemen, if you will laugh at the application, on the human species, of the ingenious method imagined for the murder of cows and goats.

This may be seen on page 4 of "Cases of Conscience," by the said Gury, published at Regensburg in 1865.† It is a question here of a man named Adalbert, who, intending to kill his enemy Titius, killed by error his friend Caius. What should we think of Adalbert?

"Adalbert should be entirely dispensed from the sin of homicide; for his external act was not directed positively against Caius, who was killed involuntarily by him. Consequently he is not obliged to any restitution to Caius' heirs."

seems doubtful and depends upon circumstances, I should like to ask any magistrate what he would do if such a man, arrested in the very act of *compensation* on the property of his neighbor, or in stealing the cash of the treasury, were brought before him? Finally, I ask any sensible man, what he will think of the situation of poor Tityre, who, on being brought again before the Court, should exclaim: "Why do you condemn me, and why do you call me a thief? My confessor, a good Jesuit, told me that I might act as I have done, with full safety of conscience."

* See page 196.

† I had only the German edition, or rather abstracts of that edition, communicated to me at the beginning of the Sitting.

So we have, in 1865, for the practice of murder, a very handy doctrine. If you wish, without committing a sin, to kill some one, the scheme is very simple: you have but to mentally wish the death of a man, and then shoot at the person by his side. (Ironical applause from the Left and Center.— Interruptions from the Right).

M. de la Rochefoucauld, Duke of Bisaccia — When you go to confess, they will be indulgent to your sins! That is all there is to it.

M. Paul Bert — I will never have to accuse myself of such actions; but it seems that the same thing cannot be said of those who go to Father Gury's confessional!

Here are, Gentlemen, some new quotations. I have here a book full of such matters. It is not a book written by a Parliament, and you can consequently reject it, so to speak, *a priori*. But I would rather advise you to peruse and verify my quotations. I have named the texts, pages, works, etc., and until you have brought to this tribune the proof . . .

A Member of the Right — We shall bring it!

M. Paul Bert — We shall see, Sir; in the meantime, please listen to the consequences I draw myself from your own denials:

Until you bring to this tribune the proof that the texts I quoted are — I will not say shortened, the word is too easy when it is a question of a quotation necessarily incomplete, but — shortened to such an extent as to altogether alter the meaning (Good! from the Left); yes, the day that you present this proof, that day you will have the right to say, in the presence of the Chamber, that I am a calumniator! But until then, I have the right, and I use it, to return that epithet to those who have made use of it! (Hurrah! good! good! Prolonged applause from the Center and Left. The orator, on returning to his seat, was warmly congratulated by a great number of his colleagues).

THE END!!

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