Father Glynn's

THE CASUIST

A Collection of Cases in Moral and Pastoral Theology

Volume II

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PREFACE

THE generous approval bestowed upon THE CASUIST when it first appeared, two years ago, encourages us to continue the series.

The present volume, like its predecessor, contains many original Cases that appeared in THE HOMILETIC MONTHLY. To them have been added Cases of particular interest, selected from recent periodical literature, and to these Cases their authors' names have been appended.

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THE CASUIST

New Casus Conscientiae of General Import, Discussed and Solved

Vol. II

I. IMPEDIMENTUM CRIMINIS

Mr. B., a baptized non-Catholic, was validly married to a baptized lady, also a non-Catholic. As far as can be learned the marriage was in every respect a valid though an unhappy one. For a time they lived together, but owing to a disparity of temperament, together with other causes, they finally drifted apart. Some years after this, when Mrs. B. had fallen into a decline, Mr. B. became acquainted with a Catholic woman, who knew that he had a lawful wife living, but under a promise that he would marry her as soon as his lawful wife should die, she consented to live with him as man and wife. After cohabiting thus for a number of years, Mrs. B., the lawful wife, dies. The Catholic woman then accompanies Mr. B. to a Catholic priest and desires him to perform the marriage ceremony for them. She explains to him the origin and reasons of her relations with Mr. B., that she was never married to him, because his first wife was living, but still had consented to live with him because he promised to marry her on the death of his wife. It is quite evident that the Catholic woman knows nothing about the

impedimentum criminis, much less the non-Catholic Mr. B. There exists a *bona fide* ignorance on the part of both concerning any such impediment. Did this ignorance exempt them from contracting this particular impediment? I am aware that ignorance does not excuse one from incurring the other impediments to marriage, but as there is some controversy about this particular *impedimentum criminis,* what ought a priest to do, practically, in a case like this? The parties have no children, but are looked upon by the public as lawful husband and wife and it would be a hardship to separate them.

Answer: If possible get a dispensation *super impedimento criminis adulterii* and marry them. It is not certain that a dispensation is necessary, because it is not certain whether, on account of their ignorance of this particular impediment, they contracted it or not.

The controversy about this particular impediment is famous in theology. This impediment first appears in the *Corpus Juris,* in the IV book of the Decretals of Pope Gregory IX, A.D. 1236. Under title 7th, ch. 8, we read:

"Si quis uxore vivente fide data promisit aliam se ducturum, vel cum ipsa de facto contraxit, si nec ante nec post (legitima ejus superstite) cognovit eandem: quamvis utrique ipsorum pro eo, quod in hoc graviter deliquerint, sit poenitentia injungenda; non est tamen matrimonium, quod cum ea contraxit, post uxoris obitum dirimendum. Ceterum tolerari non debet si prius vel postea dum vixerit uxor ipsius, illam adulterio polluisset."

The reason for this impediment at this time seems to have been the relaxation of the rigor of the ancient penitential discipline. Under the ancient discipline, those guilty of adultery under a promise of marriage, could not get married at all, neither with the accomplice, nor with any one else. But when this discipline was

relaxed, there arose the need of some such law as the *impedimentum criminis* to safeguard society from a particular kind of sin.

Now the question arises: what was the primary object of the Pope in creating this impediment? Did he wish it principally to act as a *punishment* for those who committed adultery with a promise of marriage? Or did he create it, because of the natural indecency there would be in allowing such persons to marry? On this question hinges the whole controversy as to whether ignorance excuses from contracting this impediment. If the primary purpose of the impediment was to *punish* those who committed this crime by invalidating their subsequent marriage, then ignorance of the existence of the impediment would excuse one from incurring it, because where it was not known, it could not act as a deterrent and therefore fails of its principal object. But if the first purpose of the impediment was *not to punish* the delinquents, but to forbid unions that were wholly against all sense of Christian decency, then, of course, ignorance did not save one from the disability of the impediment, any more than that ignorance would excuse one from incurring the impediment of consanguinity or any other of the diriment impediments to marriage. This is precisely where the theologians and canonists divide. They can not agree as to the primary nature of the impediment of crime. Some authors of eminent name like Ballerini, D'Annibale, Navarrus, etc., etc., claim that this impediment was intended primarily as a punishment and a deterrent, and therefore that ignorance of its existence exempts from it. Others of equal fame as theologians and canonists, like Schmalzgruber, Reiffenstuhl, Sporer, Diana, etc., maintain that ignorance does not exempt from it, because its first purpose was not to punish the delinquents, but to forbid marriages that shocked the Christian sense of decency.

When doctors disagree, who shall decide?

Berardi, who is a very practical man, and is held in high esteem in Rome, has this to say on the subject:

"De probabilitate itaque prioris sententiae (ignorance excuses) *valde dubito; et censeo quod in praxi, sive impedimentum fuerit cognitum, sive non, dispensatio peti debeat."* (Praxis Confess. n. 840.)

Lehmkuhl (n. 770) holds that the primary object of the impediment is the punishment of the delinquents, and that if they are already married, although invalidly, still to force them to separate would be a *"poena gravissima et extraordinaria,"* and continues: *"Quare, saltem post contractum matrimonium, omnino pro probabili haberi debet sententia docens, ignorantes hanc poenam non incurrere . . .probabile habeo practice, impedimentum non adesse dummodo neuter complex legem ecclesiasticam sciverit: licet suadeam, maxime ante nuptias, ut petatur dispensatio."* (l. c.)

Hence we conclude that a dispensation should be procured, *super impedimento criminis adulterii,* before performing the marriage ceremony for Mr. B. and the Catholic woman. If for any reason it be impossible to get the dispensation, the marriage may be safely performed, since both were ignorant of the impediment and more than likely therefore did not incur it.

II. THE CASE OF A CATHOLIC LAWYER

Titius is a conscientious Catholic and a lawyer of considerable ability. In the practice of his profession, he is often called upon to defend persons who are being prosecuted in the courts for some crime. Now it sometimes happens that Titius knows, even before the case comes to trial, that his client is guilty and that he deserves to be punished; nevertheless Titius accepts the conduct of the case, because he has a special aptitude for such cases, and because he receives larger fees for them, than for the conduct of civil cases.

But on the other hand, he has serious scruples about defending such persons, because he thinks it is against the best interests of the community, tending to breed contempt for the law, and affording a more or less sure escape from the consequences of its transgression.

Question. How is he to be advised?

Answer. "In the interests of the proper administration of justice," says William Lecky, "it is of the utmost importance that every cause, however defective, and every criminal, however bad, should be fully defended, and it is therefore indispensable that there should be a class of men entrusted with this duty. It is the business of the judge and of the jury to decide on the merits of the case, but in order that they should discharge this function it is necessary that the arguments on both sides should be laid before them in the strongest form. The clear interest of society requires this, and a standard of professional honor and etiquette is formed for the purpose of regulating the action of the advocate. Misstatements of facts or of law; misquotations of documents; strong expressions of personal opinion, and some other devices by which verdicts may be won, are condemned; there are cases which an honorable lawyer will not

accept, and there are cases in which, in the course of a trial, he will find it his duty to throw up his brief."

It can not be denied that the profession of an advocate is fraught with many moral dangers. It is more difficult and more dangerous than that of either judge or jury. Dr. Arnold thought that it led inevitably to moral perversion, involving as it does the indiscriminate defense of right and wrong, and in many cases the known suppression of the truth. It is said that on the feast of St. Yves, a saint of Brittany and a lawyer, that the people chant: *Advocatus et non latro—Res miranda populo.* Indeed, it was this aspect of the calling, that drove St. Liguori from the law to the Church. Volumes have been written, both by non-Catholics as well as Catholics, on the duties and obligations of advocates, some allowing him a large measure of freedom in the conduct of civil and criminal cases, and others restricting him to cases that he believes to be just.

Without entering into a discussion of the merits of these several views, as held by these authors, many of whom are men of great ability and high character, we shall confine ourselves to a short statement of the accepted doctrine of Catholic moralists, regarding the duties and practices of advocates.

First of all, moral theology lays down the general principle that it is not lawful for a lawyer to accept any cases not founded in justice, nor to defend them by any other than just and honest means. If a lawyer were permitted in conscience to accept a dishonest case or to defend a just case by unjust means, then he would be permitted in conscience to do an injury to the party opposed to him. For the party opposed to him, whether it be the state or an individual, has a prior claim or right, rooted in the law of nature, that he shall not be injured in his person or in his goods, without just cause, nor by any other than just and honest methods.

After laying down this general principle, the moralists distinguish between *civil* and *criminal cases,* and they allow more freedom in the conduct of the latter than in that of the former. In regard to *civil* cases, no lawyer is allowed in conscience to accept a case which he knows for certain to be unjust. The reason is quite evident. An unjust case is an attempt to do another an injury. If the injustice of the case is known beforehand, then the plaintiff wilfully endeavors to do an unwarranted injury. The lawyer who accepts such a case, cognizant of its injustice, co-operates with the plaintiff. If he succeed in gaining his suit, he actually does the injury, knowingly and willingly, and is bound in conscience to make reparation. If he lose his case, he injures his own client by putting him to unnecessary expense, in prosecuting a case which he knew to be worthless.

If during the course of the trial the attorney discovers that the case is an unjust one, and if successful, will inflict an injustice on the defendant, he must secretly admonish his client to withdraw the case, or else he must throw up his brief. This is precisely the line of conduct followed by one of the most distinguished lawyers and conscientious Catholics in the United States. In the course of a trial, some time ago, he suddenly discovered that his client was endeavoring to cheat the defendant out of a large sum of money. He immediately informed his client in secret that he must compromise the case for one dollar, or he would expose him. We will say here, in passing, that we believe, with most theologians and many laymen, that a lawyer, like a physician, is justified in exposing a client or patient who is wilfully endeavoring to injure an innocent person, if after having been secretly admonished to desist, the client or patient still perseveres in his evil intent. If the justice of the case which the lawyer is asked to accept, *is in doubt,* the lawyer may

accept it, after an understanding with his client. Because the courts exist for the purpose of settling controversies, and the justice of a case, that in the beginning seemed doubtful, may, during the progress of the trial, become altogether evident. Thus it is said that Sir Matthew Hale, the distinguished English barrister and judge, had determined never to accept a case which he did not believe to be just, but was led to relax this rule, having found in two instances that cases which at first sight seemed wholly worthless were in truth well founded.

In *criminal* cases, a lawyer may defend a guilty person, although he is fully advised beforehand of the guilt of his client. In fact, it is so necessary for the safeguarding of justice that a criminal be defended by counsel, that where the accused is not able to retain legal help, the same is assigned him by the court. The requirements of the law are thus better subserved and the accused is protected in his rights.

It is a basic principle of our law, that every accused person is held to be innocent until proven guilty. Such a person is permitted by the law to defend himself against every accusation, be it ever so well founded in fact, provided only he make use of no lie or fraud or false document or other unjust means in his defense. And all this his counsel may do for him. Eventually the administration of justice is best promoted by this course.

Truth is best elicited and difficulties are most effectually disentangled by the opposite statements of able men. But under no circumstances is a lawyer in a criminal case allowed to use *unjust means* in defending his client. He is not allowed to tell lies to the judge, nor to produce false witnesses, nor to use spurious documents; because means that are dishonest in themselves are not made honest by reason of the end for which they are employed. Hence, if

an authentic document, v. g. a will, is lost, the lawyer is not allowed to substitute a counterfeit document in its stead. While this would not be a sin against commutative justice, requiring restitution, it would be a grievous sin against the truth.

In the case of Titius therefore, we say that he is justified in accepting the defense of persons whom he knows to be guilty. And having engaged to defend them, he must defend them to the best of his ability. Only his methods of defense must be just and honest. It is the privilege of the accused under the law, that even though he be guilty, his interests be protected by able counsel, and the lawyer who defends him contributes to the better and more equitable administration of justice, and to the protection of the rights and interests of the citizens. "But necessary and honorable as the profession may be, there are sides of it which are far from being in accordance with an austere code of ideal morals."

III. IMPEDIMENTUM LIGAMINIS

Bertha, a foreigner, unable to speak English, came to this country at the age of sixteen years. She was without money, relatives or friends, and was on account of her helplessness impelled to a marriage with a worthless, drunken sot, a waiter in a restaurant. In less than a year Bertha was deserted by this man, who left her a physical wreck. In two years' time she was fully cured and was proposed to by Cajus, a Catholic young man. She told Cajus of her former marriage and they spent a year in tracing the "whereabouts" of the first husband, but could find no trace of him whatsoever. Unsuccessful in their search, they concluded to get married, and have been living together ever since, i. e. about fifteen years. They now have a family of several children. They are respected by the community in which they live, are looked upon as good Catholics, and bringing up all their children in the faith. They feel that they can not separate, if for no other reason, for the children's sake, and would like to have their case straightened out, if possible. During these years they have looked for some trace of the first husband with as much diligence as their circumstances would admit of, but have found absolutely no trace of him. He was a reckless dissipated roué fifteen years ago and they think he must be dead.

Answer. This is a difficult case. On the one hand there is a question of a diriment impediment, which can not be removed by any ecclesiastical dispensation, and on the other hand there is question of breaking up a family and stigmatizing the children, or of compelling the parents to live a continent life, which as Lacroix says, *"durissimum est compellere homines, culpae immunes, ut vitam coelibem ducant, ad hoc autem compellerentur si uti non possint Matrimonio."* In the first place, there can be no question, practically

speaking, of a separation. The children are young and require the care of both parents. The scandal and sensation that would necessarily follow a separation, would rule the very thought of it out of court. The only alternatives left for the confessor to consider are, whether the parties should be compelled *"ut vitam coelibem ducant,"* or is such a construction of the divine and ecclesiastical law possible that the parties *"uti possint Matrimonio."*

There can be no question of the truth of what Lacroix says, *"durissimum est compellere homines, culpae immunes, ut vitam coelibem ducant."*

If Bertha and Cajus are at the present moment, in *bona fide,* or even in *dubia fide,* about the perfect legitimacy of their marital relations, then for the good of all concerned, their good faith—*bona fides*—must not be disturbed, and if they are in *dubia fide,* i. e., they do not know whether they are lawfully married in the eyes of God and the Church, it may be possible to change this *fides dubia* into *fides bona et certa,* that is to put their consciences at rest about their marriage, in which case prudence and discretion would dictate that this would be the line of conduct to be pursued.

The question for us to decide therefore is: Were Bertha and Cajus in *good faith,* when they got married? Did they believe honestly and sincerely that they had sufficient proof of the death of the first husband, to justify them in marrying? Or were they in *dubia fide?* That is, did they fear that notwithstanding their investigations, the first husband might nevertheless be alive, and the marriage they were then contracting might be invalid? And if they were in *dubia fide,* fifteen years ago, when they contracted the present marriage, are they *necessarily* now, and without further inquiry, still in *dubia fide?* Or may they not be in *good faith* now (i. e., judging honestly that the Church does not require any other proof of the death of the

first husband than his complete disappearance for eighteen years, considering his character, and physical condition) even if they were in *dubia fide* when the marriage was contracted? There is no doubt but that Bertha and Cajus entered into the marriage contract before the death of the first husband was fully established. They did all that was in their power, considering their circumstances, to discover and establish the fact of the first husband's death, but still the fact of his death remained uncertain. Now the question is, can they ever be said to have entered into the second marriage *in good faith* and may we proceed to judge their marriage according to the rules which presuppose them to have been in good faith when they contracted the second marriage? We are fully aware that some theologians deny the possibility of good faith under the circumstances. But other theologians, v. g. Lacroix, Lehmkuhl, etc., hold that it is not altogether impossible that in a given case, the second marriage may have been contracted in good faith, and the parties to it may be left undisturbed. Lacroix treats this case at considerable length in the VIth book of his treatise on marriage, p. iii. He says in effect, that Bertha may judge in good faith, upon probable arguments only, that her first husband is dead, and she may not know that any greater certainty is required on this point. Wherefore she may be said to have contracted in good faith, if she innocently thought that she could lawfully marry again, while there existed doubt about the death of her first husband, considering the circumstances of her case, although she might know in a general way, that it was not allowed to marry again during the lifetime of her first husband. On the contrary, continues Lacroix, if she entered into the second marriage, fearing that she might be sinning, she acted in bad faith. To this Lehmkuhl adds, that the fear or remorse which agitated Bertha, while contracting the second marriage, lest she

might be committing sin, may have arisen from other causes, v. g. because she married outside the Church, without publication of the banns, etc., and the fact that she feared lest she might be sinning in contracting the second marriage, is not of itself conclusive proof of bad faith on account of a former marriage tie. The cause of such fear and remorse would have to be examined into, in order to discover whether it was evidence of bad faith or not.

In the present case, Bertha may have contracted the second marriage in *dubia fide*. That is she may have been *in doubt* as to whether she had sufficiently investigated the death of her first husband, according to the requirements of the Church. Three years had elapsed between the disappearance of her first husband and her second marriage. She may have doubted at the time whether there was a sufficient interval to justify her in taking for granted that her husband was dead, notwithstanding her fruitless efforts to trace him. But now it is eighteen years since he disappeared, and considering his character and physical condition at the time, she may very easily believe *now* that he is dead, although she did not believe it so firmly fifteen years ago, when she contracted the second marriage. She may therefore believe now *bona fide,* that any impediment *ligaminis* has long since been removed by death and that nothing prevents her being united now in lawful wedlock to Cajus.

The lapse of time has intervened to turn what was a *fides dubia* fifteen years ago, into a *fides bona* now. We do not say that this is so in the case of Bertha, because all we know about her is what is stated in the case as given above. But we judge that what we say will fit her case. And the circumstances of her case being what they are, we think, *salvo meliori judicio,* she might be permitted to renew her consent, which would confirm her good faith, and be left in peace. Note also the following decision:

The Holy Office was asked, March 22, 1865, whether a woman, who had waited in vain for the return of her husband, and who, judging after three years that he was dead, had married again in good faith, could be allowed to continue in the second union, until it be established beyond doubt that the first husband was living? The Holy Office answered:

"Leave them in good faith."

"Mulier, quum frustra reditum mariti expectasset, post tres annos existimans ipsum jam mortuum esse, bona fide alii viro in matrimonio se conjunxit, et cum impossibile nunc sit investigare, utrum primus maritus vivat adhuc, aut reapse mortuus sit, quaeritur, utrum relinqua ipsa possit in usu secundi matrimonii contracti donec certitudo habeatur de vita primi viri?"

Resp. "Relinquendos esse in bona fide."

IV. PLENARY INDULGENCE

Titius goes to Confession and confesses all his mortal sins and as many of his venial sins as he can remember. Thereupon he elicits contrition for *all* his sins, both mortal and venial, and resolves to avoid all mortal sins in the future, and as many of the venial sins as the grace of God shall enable him to avoid. Then he receives absolution. Are not all his sins, both mortal and venial, remitted *quoad culpam?* If now, before committing any new sins, he complies with all the requirements for gaining a plenary indulgence, does he not gain the indulgence? Why then do the theologians say that it is very rare that any one gains a plenary indulgence? For instance, Father Noldin says: "Licet omnis indulgentia plenaria, quantum est ex parte concedentis, totant poenam temporalem delere possit, non tamen omnes eam plene, sed quamplurimi solum *ex parte lucrantur*: in illis enim, qui nullam culpam, neque venialem habent (is not this the case of Titius?) omnes poenae delentur: in illis autem qui adhuc aliquod veniale peccatum habent, remittuntur quidem poenae debitae pro culpis jam deletis, non autem illae, quae debentur culpae adhuc remanenti."—p. 355.

Answer.—There are two questions involved in the above case. The first question is: Are not *all* sins forgiven *quoad culpam* if they are confessed as fully as possible, and repented of? The second question is: Why should it be so difficult to gain a plenary indulgence, in such a case, since a plenary indulgence is gained by those who are free from all *culpa* of sin, and comply with the conditions of the indulgence?

Ad. I. When a penitent confesses all his mortal sins and as many of his venial sins as he can remember, and is then sorry for all his sins both mortal and venial, *ex motivo universali,* or if he be sorry for

his mortal sins *ex motivo particulari* and for his venial sins *ex motivo universali,* v. g., because they are a refusal of obedience to God, or because they keep the penitent from being united more closely to God, and if then the penitent resolve to avoid not only all mortal sin in the future, but *all* venial sin, in as far as the grace of God will enable him, and then receives absolution, *all* his sins, both *mortal* and *venial* are remitted *quoad culpam,* and all his mortal sins, quoad *poenam aeternam,* but not quoad *poenam temporalem.*

Ad. II. If now he comply with *all* the conditions for gaining a plenary indulgence, and does not in the mean time commit the *slightest* fault, then he gains the plenary indulgence. But as it is almost impossible for a person not to commit some very slight sin, v. g., of impatience, or lack of perfect charity toward one's neighbor, etc., apart from a very special grace of God, which is not ordinarily given, then the penitent does not gain a plenary indulgence, i. e., there is a temporal punishment and *a culpa* remaining on account of the sin of impatience or lack of charity, which prevents the gaining of a perfect plenary indulgence. Ballerini says: Raro fidelis affectum omnem vel minimum erga quodlibet veniale exuunt, ac sufficienter dolorem de omnibus venialibus its concipiunt ut omnem remissionem consequuntur.

Theoretically, a penitent confessing *all* the venial sins that he can remember, and eliciting sorrow for all venial sins, confessed and not confessed, ex motivo *universali,* i. e., a motive equally applicable to *all* venial sin, and who then resolves to avoid *all* venial sin in the future, *in quantum potest adjuvante gratia Dei,* such a penitent is absolved from *all* "culpa peccati," both mortal and venial, and if he does not commit any new venial sin before complying with all the conditions of a plenary indulgence, then certainly he gains the plenary indulgence *plenarie.*

Practically, this happens so rarely, that theologians say that it is very rare that a person gains a plenary indulgence *plenarie.*

But although the indulgence granted "ut plenaria" is not gained *plenarie,* or *plenissime,* it is certainly gained *partialiter,* and the opinion which says that an indulgence, granted *ut plenaria,* must be gained either *plenarie* or *nullo modo, ita ut totum vel nullum effectum sortiri debeat,* is not a probable opinion.

V. IMPEDIMENT OF SPIRITUAL RELATIONSHIP

"I have secured a dispensation from the banns for a marriage case, the reason being *ad concubinatum finiendum et ad prolem legitimandam.* Now I find that the woman in the case gave private Baptism to one of the children, who was at the point of death. Do I have to get a dispensation *super impedimento cognationis spiritualis?* Furthermore, is it of obligation to have witnesses at this marriage? The contracting parties have lived together nearly twenty years. Would one witness suffice, or may not the priest act as a witness?

"Thirdly, the man has asthma and, I believe, rheumatism or dropsy; he can not, or at least only with great difficulty, get to the church. The statutes of the diocese forbid marriage in the house without permission. The man is not confined to his bed. Must I get permission to marry them in the house?"

Answer. The first question proposed above is one of *spiritual relationship* arising from the administration of *private Baptism.* Baptism, being a regeneration or *new birth,* begets relationship, in the *spiritual* order, in the same way that generation in the *order of nature* begets blood relationship. The Church has made this spiritual relationship a *diriment* impediment to marriage. As nature abhors marriages between close blood relations, so does grace abominate marriages between the spiritually related. Such marriages are looked upon by the Church as forbidden by the Christian sense of decency, of filial piety and mutual respect engendered by the grace of God. In the interests of religion, therefore, the Church forbids such marriages.

According to the Council of Trent (ss. 24), marriage is void between the following persons, spiritually related by Baptism: 1. Be-

tween the *minister* and the *baptized;* 2. Between the *minister* and the *parents* of the baptized; 3. Between the *godparents* and the *baptized;* 4. Between the *godparents* and the *parents* of the baptized.

To contract this impediment, the Baptism must be *validly* even though *illicitly* administered. A priest who merely supplies the solemn ceremonies of Baptism, but who does not actually baptize, does not contract any spiritual relationship, because no spiritual regeneration has taken place. Again, this impediment is by its very nature *reciprocal;* it can not, therefore, be contracted by one person, unless it is contracted at the same time by the others, and since it is *juris ecclesiastici,* and does not affect the *unbaptized,* therefore if a baptized person administer Baptism to the child of unbaptized parents, he does not thereby contract spiritual relationship with the parents. This opinion is supported by Lacroix, Bonacina, Ledesma, Sanchez, and others against equally grave theologians.

In like manner, if a *baptized* mother baptized her own child by an *unbaptized* man, she would not thereby contract any spiritual relationship with him, and might be married to him later on, without the need of any dispensation *super impedimento cognationis spiritualis.* Again, if a Catholic man marries a convert who is baptized *sub conditione* on joining the Church, and for whom the Catholic man acts as sponsor, a dispensation is needed, because the presumption is against the validity of the non-Catholic Baptism, the probable validity of which could hardly be established.

We come now to the question whether spiritual relationship arises from *private Baptism* administered in danger of death. As regards the *minister* of the Sacrament, all are agreed that he contracts spiritual relationship both with the person baptized and with his or her parents, whether it be a case of necessity or not. A valid Bap-

tism, whether solemn or private, is a *new birth,* and as such creates spiritual relationship.

Godparents are not required for private Baptism, hence there seems to be some doubt whether they contract spiritual relationship with the natural parents of the child. St. Alphonsus says that *more probably* they do not contract such relationship. However, the Congregation of the Council, in 1678, in answer to the question, replied that godparents, even in private Baptism, do contract spiritual relationship with the baptized, and his or her parents.

A mother baptizing her *illegitimate* offspring in danger of death, thereby contracts spiritual relationship with the father of the child, provided the father is baptized, and she can not marry the father later on, unless a dispensation from the diriment impediment of spiritual relationship be first procured. But if a father or mother baptize their *legitimate* offspring, whether in a case of necessity or outside of it, they do *not* contract any relationship, and are not deprived of the *jus petendi debitum,* because such a deprivation is by nature *penal,* and is not stated in the law.

The second question asked above is whether witnesses are required for this marriage?

Before the decree of *"Ne temere"* went into effect, that is before Easter Sunday, 1908, in those places where the "Tametsi" of the Council of Trent was never published, no witnesses were required for the validity of the marriage, though two witnesses were required by the law of the Church for the licit performance of this marriage. However, since Easter, 1908, an important change has been made in this most important matter. According to the present regulation of the Church, as laid down in the recent decree (August, 1907) *Ne temere,* two witnesses are required in every case for the valid

celebration of any marriage. Section III of this decree reads as follows:

"Only those marriages are valid which are contracted before the parish priest or the ordinary of the place or a priest delegated by either of these and at least TWO WITNESSES."

Section VII further adds: "When danger of death is imminent and where the parish priest or the ordinary of the place or a priest delegated by either of these can not be had, in order to provide for the relief of conscience (and, should the case require it), for the legitimatization of offspring, marriage may be contracted validly and licitly, before any priest and TWO WITNESSES." Again, Section VIII reads: "Should it happen that in any district the parish priest or the ordinary of the place or a priest delegated by either of them, before whom marriage can be celebrated, is not to be had, and that this condition of things has lasted for a month, marriage may be validly and licitly entered upon by the formal declaration of consent made by the spouses in the presence of TWO WITNESSES."

Hence it is clear that in every case of marriage witnesses are required, and therefore in the case before us the marriage would not be valid unless contracted in the presence of two witnessss.

The third question to which an answer is desired regards marrying the parties in their homes, which is forbidden by the statutes of the diocese.

The statutes of the diocese, forbidding "home weddings," evidently do not contemplate a case like this one. The purpose of the statute is to discourage home weddings, where there is no grave reason why the parties should not be married in the church. There is a grave reason here, in fact several grave reasons, why these people should be married at home, and the priest may, in the present instance, declare the statute suspended.

If there be any real hardship in approaching the bishop for a dispensation, for some particular reason, and if it be seriously difficult to provide prudent witnesses, then the law of having witnesses ceases to bind. But as this does not appear to be the case in the present instance, it would be better to procure a dispensation.

VI. A CLERIC IN MINOR ORDERS ACTS AS SUBDEACON

John is a seminarian in minor orders. His home is in a country parish where there are two priests. The pastor asks John to act as subdeacon at the solemn Mass on Christmas Day. If John does not act, it will be impossible to have a solemn Mass. It is desirable that John should act. Is there any canonical prohibition, forbidding John, in these circumstances, to act as subdeacon? And if he acts as such, does he become irregular?

Answer. The general law of the Church forbids a cleric, under pain of incurring irregularity, to exercise *solemnly,* a sacred order that he has not received. The law reads thus: *"Clericus qui scienter et sollemniter exercet ordinem sacrum, quem non habet, fit irregularis."* In the first place it must be observed that the canon is directed against *clerics,* i. e., one must be at least a *tonsured clerk,* to fall under the canon. Therefore a layman, who, pretending to be a priest, should say Mass, or hear Confessions, would not incur any irregularity by such acts, although he would sin very grievously. Neither would a layman, even though he were a seminarian and wore the clerical garb, become irregular by acting as deacon or subdeacon at a solemn Mass. One must be at least tonsured to be affected by this canon. The next thing to be observed is that irregularity is incurred only when a cleric exercises a *sacred* order, which he has not received. Since the discipline of the Church to-day allows laymen to exercise solemnly the minor orders, clerics do not become irregular for exercising them. The irregularity begins with the *solemn* exercise of the subdeaconate by a minor cleric. The other terms of the canon that require an explanation are:

1. *Scienter,* i. e., the cleric must know that he has not the *sacred* order, which he is now exercising, and moreover he must be aware of the irregularity. If he be ignorant of the irregularity, he does not sin grievously, and therefore does not incur the censure.

2. *Sollemniter.* When do canonists consider a cleric to have *solemnly* exercised a sacred order? If the act which the cleric exercises, is *never* exercised, except by those who have received the order, then it is always done *sollemniter.* For instance, since Extreme Unction is never administered except by an ordained priest, a cleric not in priest's orders, who would attempt to anoint the dying, would necessarily act *solemnly* and become irregular. In like manner also a priest, who would administer Confirmation, would of necessity, be acting solemnly, and would become irregular. But if the order which the cleric exercises, is sometimes exercised by others than those who have received it, v. g. one in minor orders may sometimes act as subdeacon at a solemn Mass, then a cleric is said to exercise *solemnly* a sacred order, which he has not received if he exercises the act exactly like those do who have received the order and if he wears the distinctive ornament of the sacred order. Thus the distinctive ornament of a subdeacon is the maniple, and of the deacon the stole. If a clerk in minor orders acts as subdeacon at a solemn Mass and wears the maniple, he becomes irregular. If he omits the maniple, he does not incur any irregularity. Neither does a subdeacon become irregular for acting as a deacon at a solemn Mass, if he omits the stole, because the wearing of the stole renders the act a *solemn* exercise of the order and brings it under the canon.

On March 10, 1906, the Congregation of Rites issued a decree which was confirmed by the Holy Father, and which covers the points at issue here. The decree says:

"Clericus ad munus subdiaconi obeundum in Missa solemni, nunquam deputetur, nisi adsit rationabilis causa et in minoribus ordinibus sit constitutus, aut saltem sacra tonsura initiatus."

The decree forbids laymen to act as subdeacons in a solemn Mass. The wording is *"num-quam deputetur."* That a man who is not in subdeacon's orders, may act as a subdeacon at a solemn Mass, two conditions are required:

1. That the man be at least tonsured.
2. That there be real need for him to act.

Here it might be inquired whether it be the purpose of the decree to forbid even seminarians, who are not tonsured, to act as subdeacons in a case of necessity. We hardly think it is. The decree seems to be intended primarily for those countries where every person who begins to study for the priesthood is immediately tonsured, even though he be but a young boy. In those countries, generally speaking, there are no seminarians who are not tonsured. The custom exists in some countries of Europe on solemn feasts, of having a layman, not a seminarian, but a man who has no notion of ever being a priest, act as subdeacon. Even a married man, v. g. the sexton of the church or the sacristan is at times permitted to take the place of the subdeacon. If there were a seminarian in the parish, he of course would be tonsured and very likely in minor orders and in a few years a subdeacon. His acting as subdeacon would not scandalize the faithful, whereas the participation of the layman in the sacred function does scandalize the faithful. In countries like the United States, young men, studying for the priesthood, live in the seminary and wear the cassock, although they may not be tonsured. They hold the same station among the laity as tonsured clerks do in other countries. They are looked upon as clerics and the same conduct is required of them as is

required of tonsured clerks elsewhere. In a country like Germany, where many men follow the courses of theology at the university and intend to be priests, but who have never lived in a seminary, nor dressed as clerics, it is unbecoming to allow them to act as subdeacons, and we understand that the decree forbids such action. The decree includes also those young men who, in a country like France or Canada, enter the great seminary to test their vocation, but who do not adopt any clerical dress, nor in any way consider themselves as clerics. It is evident that these should not appear at the altar in sacred vestments to take part in a solemn Mass.

In case a cleric not in sacred orders acts as subdeacon at a solemn Mass, the decree of the Congregation of Rites just mentioned makes a few observations for his guidance. He is to vest exactly like the subdeacon, omitting only the maniple. He is to perform all the ceremonies, as if he were a subdeacon, except the following:

1. He must not pour the water into the chalice at the offertory, but must let the deacon do so.

2. He must not touch the chalice *infra actionem,* nor cover it with the pall, nor uncover it.

3. After the communion, he must not purify the chalice, the celebrant must purify it; after which he (the subdeacon) covers it with the veil and burse and carries it to the side table.

VII. CREMATION

Mr. B., a firm believer in modern methods of public sanitation, has made provision in his will that after his death his body shall be cremated. May he receive the last Sacraments and Christian burial, and why is the Church so opposed to cremation?

Answer. All civilized nations, both ancient and modern, have regarded the burial of the dead as a religious rite. In ancient Rome, it took precedence over every other service, whether public or private. The Roman soldier could demand leave of absence from the army, not only to bury his dead, but also for the feast of the purification of the family, called *feriae denicales,* which occurred nine days after the burial. Not only were the last rites of the dead considered religious or sacred, but the burial place also, by virtue of the laws, enjoyed a religious character. It was quite natural, therefore, that, in the nascent Church, the Christians, professing a different religion from the Romans, should also differentiate themselves from the pagans in the manner and place of burying their dead. The common practice in pagan Rome, at the beginning of the Christian era, was to burn the bodies of the dead. This had not been the ancient custom, even among the Romans, and at the dawn of Christianity there still prevailed among them the practice of cutting off a bone from the corpse, or rescuing one from the fire, in order to deposit it in the earth. The reason for this was that the burial of the ashes of the dead after cremation did not render the burial place sacred; it acquired a religious or sacred character and was brought under the protection of the laws only by the burial of some part or bone of the body, that had not been cremated. Each family had its own burial place, restricted to the parents and children and brothers and sisters, and a few intimate friends and

favorite freedmen. The idea of a general burial place for all the inhabitants of a town or district was unknown to the ancients. The indiscriminate burial of friends and foes, relatives and strangers, in one monument where their ashes would be mingled together, was especially abhorred by the people and severely punished by the law. It was to be expected, therefore, that the Christians, who believed in the resurrection of the body as one of the great articles of the new faith, should have had, from the very beginning, a great religious care for the bodies of their dead and for all the rites attending their burial. They adhered to the more ancient custom of the Romans, as well as of the Jews, of burying their dead in the ground. They detested the practice, prevailing at that time among the Romans, of burning the bodies of the dead, just as they abhorred the other religious rites and practices of the pagans. Minucius Felix, in the third century, says that the Christians execrate the funeral pile and condemn burial by fire. "We follow," he says, "the ancient and better plan of burying in the ground."

From the early writers and Fathers of the Church, we gather many reasons why the Christians preferred rather to bury the bodies of their dead in the ground than to burn them. Burning the dead was a pagan religious rite of the time, from which, as from all the religious rites of the pagans, the Christians wished to dissociate themselves. One of the central truths of the Christian faith was the resurrection of the body. Cremation seemed to deny this doctrine. The Saviour was buried in a tomb, from which He rose triumphant over death. The disciple desired to be buried after the manner of his Master, hoping to rise again in the body, like his Master, from the grave. The immortality of the soul and the resurrection of the body were two great beacon lights that illumined

the darkness and the sufferings of the first Christians. Burning the body of the dead seemed to them a confession of the total annihilation of the whole man. It shocked their sense of reverence and affection for the dead, but more especially their religious sense. And thus, from the very beginning of Christianity, burying the bodies of the dead in the ground became intimately associated with the Christian faith, and all the rites and ceremonies of the Church that accompany the burial of the dead, the prayers of the Missal and of the Ritual have grown up around and been developed according to the custom of burying the dead in the ground. When we have the bodies of our dead near us we are reminded to pray and offer sacrifice for them, we erect monuments over them that stimulate our piety and proclaim aloud our belief in the resurrection of the body and life everlasting. The custom fosters reverence for the dead, whose bodies have been sanctified by so many Sacraments. It is not as repugnant to our natural instincts to allow our dead to return to dust by the slow processes of tender mother earth, as to violently burn and destroy them by fire. These are but a few of the reasons why the Church, throughout the ages, has preferred to bury the bodies of her children in the earth rather than to destroy them by fire.

Cremation does not necessarily deny any truth of revelation. It does not necessarily imply a denial either of the immortality of the soul or of the resurrection of the body. Whether the body returns to dust slowly by the action of the forces of the earth, or quickly by the action of the fire, is, in itself, a matter of indifference.

The Church permits her missionaries, as in India, where cremation is the ordinary method of disposing of the bodies of the dead, to remain passive in cases where they know that the bodies of neophytes are to be burned. (Cong. de prop. fide, Sept. 27, 1884.)

But circumstances may add a very definite character to something that is quite indifferent in itself. And this is the case with cremation, generally speaking. The Church is cognizant of the fact, that the cremation of human bodies, to-day, is not only a departure from the time-honored and world-wide Christian custom of burying in the ground, but that it is meant, as a rule, to be a protest against the Christian faith. The promoters of cremation are endeavoring to rehabilitate the ancient pagan custom of disposing of the bodies of the dead in order to put an end to Christian cemeteries and Christian burial rites and practices, in order to destroy the powerful evidence they bear to the Christian faith, and the influence they exert in promoting Christian piety. By cremating the human body, they wish to signify the total annihilation of man by death. Thus cremation becomes, *per accidens,* a profession of heresy and an attack on the Christian faith. Hence the Church forbids it. In particular circumstances, as, *v. g.,* during an epidemic, the Church makes no objection to the burning of the human body. The only argument that can be urged in favor of cremation is the argument founded on the consideration of the public health. But the public health is already amply protected by the laws of the Church regarding the location of cemeteries and the manner of burying the body.

The Congregation of the Holy Office has repeatedly, in the last twenty-five years, issued decrees prohibiting the cremation of the bodies of the dead. The following is a summary of these decrees:

It is forbidden for Catholics to belong to any society or organization whose object is the cremation of the bodies of the dead; and if such society be in any way affiliated to the Masons, its members fall under the ban of excommunication.

It is forbidden for a Catholic to order his own body, or the body

of any one else, burned; a Catholic may sometimes co-operate, *materialiter,* in cremating the bodies of the dead, either as officials or as workmen, if such co-operation is not desired precisely because the officials or workmen are Catholics, and as a sign of contempt for the Catholic faith and if the cremation contain no profession of Masonry.

It is not allowed to give the last Sacraments to a dying man or woman, if he or she insists that after death the body shall be cremated; neither is it allowed to give the remains Christian burial, if it be known publicly that the deceased continued in this mind to the end of life.

It is not allowed to say Mass for such persons publicly or in the name of the Church, but Mass may be offered privately.

It is lawful to perform the last rites over the dead, either at their home or else in the Church, but not at the crematory, if it was not the will of the dead that his body be cremated, but the will of those in charge of the funeral, provided, of course, that all scandal be removed.

Again, it is permitted to give Christian burial to those who order that after their death their bodies shall be burned, provided they are ignorant of the Church's prohibition; also to those who, after having made such provision in defiance of the Church's laws, desired sincerely, before their death, to revoke the provision, but who for some valid reason were unable to do so.

This is a short synopsis of all the decrees concerning cremation, issued by the Holy Office in the last twenty-five years.

Mr. B., therefore, may not receive the Sacraments of the Church, as long as he continues in his resolve to have his body cremated, because he is in mortal sin, defying a grave law of the Church. And if it be known by the general public that he persevered to the end of his life in his resolve to have his body cremated, he can not receive Christian burial.

VIII. SECRET SOCIETIES

A convert to the Catholic faith is a knight of Pythias. He was a knight for many years before he became a Catholic. He carries a few thousand dollars life insurance in the order. As he is a poor man, it would be a great hardship for him to quit the order and forfeit this insurance. What shall he do about it?

Answer.—There are two categories of so-called secret societies, forbidden to Catholics: (a) societies, like the Masons, that are forbidden *under censure,* i. e., under pain of excommunication; (b) societies, like the Knights of Pythias, that are forbidden under *pain of sin,* but not under censure.

On October 11, 1869, Pope Pius IX issued his famous Bull, *Apostolicae Sedis,* in which among many other censures, reserved to the Holy See, is the censure of excommunication pronounced against *"nomen dantes sectae Masonicae aut Carbonariae aut aliis ejusdem generis sectis, quae contra ecclesiam vel legitimas potestates seu palam seu clandestine machinantur necnon eisdem sectis favorem qualemcunque praestantes earumque occultos coryphaeos ac duces non denuntiantes, donec non renuntiaverint."*

Two qualifications are required in order that a society or organization fall under the bann of excommunication: (a) its members must constitute a sect, that is, they must be united very closely together by the profession of the same principles, that the society as a body professes and advocates; (b) it must war against the Church or against the State, even though it exist for other purposes also.

The societies generally understood to possess these two qualifications and therefore to be forbidden under pain of excommunication are:

1. The Masons. Pope Clement XII, in 1738, first excommunicated the Masons. Then Benedict XIV, in 1751, reaffirmed the censure, as did Leo XII, in 1825, Pius VIII, in 1829, Pius IX, in 1869, in the Bull *Apostolicae Sedis,* just mentioned, and finally Leo XIII, in 1884, in the Bull *"Humanum genus."*

2. The Carbonari, a secret political society organized in Italy, in the beginning of the last century, whose purpose was the overthrow of the existing government and the establishment of a republic. They were excommunicated by Pius VIII and Leo XII.

3. The Fenians. This society was prohibited under censure of excommunication, by the Holy Office, January 12, 1870.

4. Societies of Anarchists and Nihilists, in Russia especially, but wherever they may exist, since their purpose brings them under the ban of excommunication.

No Catholic, therefore, may belong to any of the above named societies, without committing mortal sin, and at the same time incurring excommunication, which excommunication is reserved to the Holy See.

In the second category of forbidden societies, namely, of those that are forbidden under pain of mortal sin, but without the censure of excommunication, are to be placed the three societies, expressly mentioned in the official papal documents, that is to say:

1. Odd Fellows; 2. Knights of Pythias; 3. Sons of Temperance.

There are other societies also forbidden under pain of mortal sin, v. g., the Good Templars, Cremation Societies, etc., but our concern is at present with the three first mentioned. On February 13, 1896, the following letter was sent to the archbishops of the United States, from the Apostolic Delegation at Washington, D. C., for the information and guidance of the Ordinaries and clergy of the United States:

Apostolic Delegation,
United States of America.

Washington, D. C., Feb. 13, 1896.

YOUR GRACE:

Under date of August 13, 1895, I received from the Cardinal Prefect of Propaganda instructions regarding the application of the well-known decree of the Holy Office condemning the three societies, "Odd Fellows," "Knights of Pythias," and "Sons of Temperance." According to these instructions which I communicated to your Grace at the time, the condemnation was to be considered absolute, and wherever peculiar circumstances seemed to merit special consideration in particular cases, the matter was to be referred by the Ordinary to Rome. In consequence, many Bishops have, since that time, sent cases to the Propaganda which have been referred to the Holy Office for consideration. The Supreme Congregation, after deliberation on such cases, has, by a decree dated January 18, 1896, determined on a course which is explained by the words which I quote from the decree itself:—

"Quæsitum fuit an remota quavis alia earundem sectarum participatione, hoc saltem liceat nomen proprium in sociorum catalogis retinere, necnon in præfatæ taxæ vel æris alieni solutione stato tempore perseverare.

"Quod dubium sane gravissimum, cum SS. D.N. Sacræ huic Supremæ Congni commiserit enucleandum, eadem S. Congregatio, re mature perpensa respondendum censuit:—Generatim loquendo non licere: et ad mentem. Mens est quod ea res tolerari possit sequentibus conditionibus et adjunctis simul in casu concurrentibus, scilicet: 1o. Si bona fide sectæ primitus nomen dederint antequam sibi innotuisset societatem fuisse damnatam. 2o. Si absit scandalum vel opportuna removeatur declaratione id a se fieri ne jus ad emolu-

menta vel beneficium temporis in ære alieno solvendo amittat; a quavis interim sectæ communione et a quovis interventu, etiam materiali, ut præmittitur, abstiendo. 30. Si grave damnum sibi aut familiæ in renunciatione obveniat. 40. Tandem ut non adsit vel homini illi vel familiæ ejus periculum ullum perversionis ex parte sectariorum, spectato præcipue casu vel infirmitatis vel mortis: neve similiter adsit periculum funeris peragendi a ritibus catholicis alieni.

"Quæ cum SSmo Dno N. papæ Leoni XIII relata fuerint, in totum approbata et confirmata fuerunt. Verum cum de re gravissima atque periculorum et difficultatum plena agatur, quæ plurimas non modo dioceses sed et provincias ecclesiasticas respicit, idem SSmus Dnus N. jussit ut uniformis regulæ servandæ causa, casibus particularibus Eminentia Tua et in Apostolica Delegatione successores providere possint."

I beg your Grace to communicate the above disposition of the Holy See as soon as possible, to your Suffragans and through them to the Confessors. With sentiments of highest esteem and fraternal charity, I remain,

For His Eminence, Apostolic Pro-Delegate,
Most faithfully yours in Xt,
D. SBARRETTI, Auditor.

From this decree of the Holy Office, it is evident that members of the three societies, or of any one of them, can not be absolved unless they *absolutely* renounce their adherence to the prohibited societies. This renunciation must be external, complete and made in good faith; because the aims and purposes of these societies are known to be dangerous to religion and to society, although the individual members of them may be quite ignorant of this fact.

Since, however, besides their leading aims, which are for the most part a matter of secrecy, these societies have for their secondary object mutual assistance in temporal things, the question arises whether a member, who having joined the association in good faith, has given his share toward the accumulation of a benefit fund, a proportionate part of which was to be returned to him or his family with just interest, either as savings or as relief money in case of sickness or death—whether such a member must so far renounce his connection with the society as to sustain a serious loss. To this, the Holy Office answers: As a rule, such financial loss is not a valid reason for continuing in the society, since it is impossible for a man to remain a nominal member of a society, without either furthering its main object, though unwillingly and unconsciously, or else giving scandal to those who do not know the true reasons for his remaining a nominal member, and who will naturally assume that such membership means practical co-operation in the aims and purposes of the society.

Nevertheless, there may be cases where there is no scandal given by the person continuing a nominal member, and where there exists no danger for his faith and where withdrawal would mean serious pecuniary loss. In such cases, provided the man joined the society in good faith, not knowing that it was forbidden, the pastor or confessor may make application in order to obtain permission to give the man absolution although he allows his name to remain on the rolls of the society in order to be entitled to the insurance for which he has been paying perhaps for many years. If such be the case, the Apostolic Delegate in Washington has been empowered by the Holy See, to allow a mere nominal membership to continue, according to his judgment of the case, for the sole purpose of securing for the applicant an external title to what really belongs to him, without

identifying him with the dangerous or unlawful character of the forbidden society.

In summing up the case before us, we would say that:

1. Since the man in question became a Knight of Pythias in good faith, that is before his conversion to the Catholic Church,

2. Since he can not now withdraw from the order without serious pecuniary loss, being a poor man; then

3. If his nominal membership create no special danger for his spiritual interests, and

4. If such membership give no scandal, then application ought to be made to the Apostolic Delegate in Washington by the man's confessor, or through him by the bishop, to obtain permission for the gentleman to continue a nominal member of the K. P.'s, in order to be able to claim legally the insurance that belongs to him and to his family. The confessor has no power or jurisdiction to judge whether the conditions that may permit nominal membership are verified or not; neither has the ordinary such power. The Apostolic Delegate alone is the competent authority to determine whether the circumstances of the case call for a special permission or authorization to continue a nominal member of the society.

IX. THE SEAL OF CONFESSION

Titus, a priest, has for some time, been hearing the monthly confessions of certain boys. Recently the boy J. came to Confession and confessed among other things, that he had been "mad at a boy." No names are mentioned, but the priest happens to know the boy J., who is confessing, and thinks he knows also the one at whom J., as he says, is "mad," and whose name is H. After questioning to satisfy himself that J. entertains no further ill-will against the other boy, the priest absolves and dismisses the penitent. Subsequently he notices that the two boys J. and H. are no longer seen together, though they had in the past associated a great deal. Titus, in an occasional talk with H., whom he thinks to be the boy referred to by J. in Confession, asks H. if he and J. were not on good terms, and H. admits they were not. Titus brought up this matter in order to bring about a reconciliation between the two boys, one of whom, J., had in Confession expressed his consent to be reconciled.

Did Titus act properly in asking this other boy H. about the matter? e. g., if he and J. were on good terms? Would the two boys concerned be likely to think that the priest made use of knowledge which he had obtained in the confessional?

Answer. There are two decrees of the Holy See extant, regarding the use of knowledge gained in the confessional. The first is a decree of Clement VIII, May 26, 1593, in which superiors of religious orders are forbidden to make use of any knowledge gained in the confessional, for the external government of the order. DeLugo and St. Alphonsus, both maintain that this decree is to be extended to all superiors, even though they belong to the secular clergy, in relation to all classes of penitents, because the decree does not

contain merely a particular regulation for some individuals, but it promulgates a divine law concerning the seal of Confession. And for this reason, they say, that the doctrine of the earlier theologians, that knowledge gained from Confession might be made use of, provided there was no danger of revealing the sins of the penitent, that is, provided others would not suspect anything about the penitent, must be corrected. The other decree is a decree of the Holy Office, November 18, 1682, by which it is forbidden to make use of information gained in the confessional, to the detriment of the penitent, even though by so doing the penitent might be saved from some greater evil or suffering, and especially from some greater sin. This decree necessitates the amendment of the principle, held also by the earlier theologians, that information gathered in the confessional might be made use of, provided the penitent could not be *rationabiliter invitus*, that is to say, when the use of such information is necessary to reclaim the penitent from sin.

St. Alphonsus admonishes all confessors to be exceedingly careful in the matter of the seal of Confession, since there is always more or less danger of either revealing the sins of the penitent or else creating hardships for him. We will give a brief synopsis of the teaching of the holy Doctor in regard to the seal of Confession. He says that it is never allowed to make use of any information gained from the Confession of a penitent, if

1. There be danger of revealing a penitent's sins;

2. Thereby a hardship be created for the penitent, or the penitent be led thereby to dislike or detest Confession;

3. Others suspect that the seal of Confession is being violated, or in other words, if others are scandalized.

1. Even though some greater evil or sin might be obviated for the penitent, by the use of information gained from the penitent's

Confession, it is never allowed to use it. Not even if the penitent did not know that the confessor was acting on information gathered from his Confession. The reason why such knowledge may not be used, even when the penitent is quite ignorant that it is being used, is that the faithful would be turned away from the practice of Confession, if they thought that the confessor might use the information gathered from their Confessions.

Therefore, if the confessor knows from the penitent's Confession, that the penitent is making bad Confessions, or is indisposed, he may not, for that reason, refuse to hear his Confession. For such conduct on the part of the confessor would be a violation of the seal and would render Confession odious.

It is never allowed to question the confessor of children concerning their conduct, nor is it permitted to consult a confessor regarding young men who are to receive holy orders. The only information that a confessor may volunteer under such circumstances is that such penitents frequent the Sacraments.

2. It is lawful to use information gathered in the confessional, provided such use does not result in hardship to the penitent and there be no fear of any revelation. For if there be no fear either of revelation or of hardship for the penitent, the Sacrament will not be made odious, even though the penitent should notice that some use was being made of what he had told in Confession, because if the use being made of knowledge gained in Confession is in no wise detrimental or burdensome to the penitent then such use does not make Confession more difficult or distasteful.

Therefore a confessor may make use of what he knows from Confession for the reformation of his own life, for the better fulfillment of his office or duties as a confessor, to pray to God for his penitents, to treat them with more kindliness, even though the

penitent might notice that this was being done because of what he told in his Confession; since the Sacrament is not thus made hateful; the confessor may also use knowledge that he has from Confession, to consult works on theology and the spiritual life; to temper his dealings with penitents in the confessional; to save himself from the pitfalls that his penitents have encountered; to admonish others, etc. In sermons it is allowed to speak in a general way of things, that a preacher would not think of unless he heard Confessions, but he must have a care not to speak of any particular sins of individual penitents.

3. A confessor may do anything that he ought to do, or would have done, even if he had not heard Confessions; even though it was the Confessions that put it into his mind to do it now; provided he take care to admonish the penitent, lest he be scandalized. But it is not lawful for a confessor to do anything on account of something he hears in Confession, which otherwise he would not have done, if from his doing so, a hardship might be created for the penitent, or there be fear or danger that something be revealed. The confessor is obliged in conscience to wait until some future event or occurrence furnish him an excuse or motive for doing what would otherwise not be done.

In answer to the question now, it is evident from what has been said above, that the priest had no right to ask the question which he put to H. Even though his purpose was to remove an occasion and cause of sin between the two boys, still his knowledge was gathered exclusively from the Confession of one of the boys, and its use, under the circumstances, would create suspicion that he was breaking the seal of Confession, and make Confession distasteful and even odious. Even though the priest might have had J.'s permission to speak of the matter to the other boy, he would first have to

explain the circumstance of the permission to H. in order to remove any scandal that H. might take by thinking that the priest was violating the seal of J.'s Confession, in speaking to him about a reconciliation. The priest should have waited until he learned, by some means independent of the confessional, that J. and H. were estranged, and then, letting the boys know clearly whence he had his knowledge, might have tried to reconcile them.

X. ANTICIPATING THE OFFICE

X. has been in the habit of anticipating his office every day at two o'clock P. M. He has no special faculty from his Bishop or from the Holy See to do this. He finds it extremely convenient, however, although there are many days when he could wait a few hours longer before anticipating for the next day.

Was his anticipation of the office at two o'clock on those days when he might have waited a few hours longer, *valid,* and if valid was it also lawful?

ANSWER:

According to the opinion of many approved theologians, and which opinion is therefore certainly *probable,* the office may be anticipated every day from two o'clock in the afternoon, in all cases *validly* and for a slight reason at least, *licitly,* without any special indult or faculty from the Holy See. We are aware that this is not the more generally received opinion of the theologians, either ancient or modern, but still it is supported by theologians of such great authority that it can be said to enjoy both internal and external probability.

St. Alphonsus, in the first edition of his Moral Theology, called this opinion most probable, *probablissima.* In the later editions, however, of his work, he retracted these words, and expressed his belief that the truer opinion was that it was not allowed, without a special permission from the Holy See, to anticipate the office at two P. M. But Sabetti, Bucceroni, Ballerini-Palmieri, Genicot, Noldin, etc., as well as the Salmanticenses, Sanchez, Viva, etc., all

agree in saying that the opinion is solidly probable, that holds that a priest may anticipate his office every day at two o'clock in the afternoon without any special authorization from the Holy See. They reach this conclusion in this way. In the beginning, matins and lauds were recited during the night time. Gradually, however, the practice grew up of anticipating the next day's office the evening before, after sunset. In the course of time this was improved on, by reciting matins and lauds when the evening began to fall, that is to say, when the sun was half way between the zenith and the horizon. Because, when the sun reached this point, the *tempus vespertinum* began. Finally the custom grew of anticipating the next day's matins and lauds, from the beginning of the *tempus vespertinum* not of the *natural* day, but of the *ecclesiastical* day. Now, the *tempus vespertinum* of the ecclesiastical day began at two o'clock. That is to say, the evening of the ecclesiastical day began when vespers were recited in the choir. Vespers were recited in choir when the sun was half way between the zenith and the horizon in the afternoon. Now, however, vespers are recited in choir at two o'clock P. M., so that two o'clock P. M. is now the beginning of the *ecclesiastical* evening. As soon, therefore, as vespers have been said in the choir, *i, e.,* about two P. M., the next day is, figuratively speaking, beginning, and the office of the next day may be begun. St. Thomas says: "Quantum ad ecclesiasticum officium incipit dies a vesperis; unde si aliquis post dictas vesperas, et completorium, dicat matutinum, jam hoc pertinet ad diem sequentem" (Quodlib. v, a. 28).

In 1876 the Congregation of Rites was asked: "Quanam hora liceat incipere privatam recitationem matutini cum laudibus vespere diei praecedentis?" To which the Congregation made reply: "Privatam recitationem matutini cum laudibus vespere diei praecedentis

incipi posse quando sol medium cursum tenet inter meridiem et occasum." Again, a few years later, the same congregation was asked: "An praedicta responsio ita intelligenda sit ut ille non satisfaceret obligationi suae, qui matutinum cum laudibus vespere diei praecedentis recitasset priusquam sol medium cursum teneret inter meridiem et occasum?" To which was answered: "Consulantur probati auctores." From these two answers of the Congregation of Rites we gather, first, that if the opinion which allows anticipation of matins and lauds from two o'clock P. M. were wrong, the congregation would have condemned it; and secondly, since the congregation refers us to approved authors, and since many of the most eminent among these allow a priest to anticipate matins and lauds from two o'clock in the afternoon of the preceding day, it follows that the Holy See gives countenance, constructively, to the practice of anticipating matins and lauds at two o'clock of the preceding day, without a special dispensation.

Therefore, we say, whoever anticipates his office at two o'clock the preceding afternoon, does so validly, that is, he is not bound under pain of mortal sin to repeat it later, either on that day or on the next; and if he have a "tenuis ratio" for so anticipating, he does so lawfully. Now, in the case before us, X. has a sufficient reason on some days for anticipating at two o'clock, but then on other days he has no special reason, and could just as well put it off until later. However, on such days as he has no special reason for beginning the next day's office at two o'clock the very convenience that it affords him is a sufficient reason. It lends regularity to his recitation of the office, and strengthens a very excellent practice, and is of itself ample reason for anticipating every day at two o'clock P. M. It would be difficult to convince us that not every secular priest in this country has sufficient reason to anticipate his

office at two o'clock P. M. every day, without any special dispensation or faculty to do so. But when one considers the weight of theological authority which justifies one in so doing, he were a very scrupulous and unreasonable man, indeed, who would give up so laudable a practice for so poor a scruple.

XI. DISPARITAS CULTUS

Bertha is married to a man who does not know anything about his baptism. Bertha is a Catholic. The man was the son of a non-Catholic family, the mother being a Methodist, but the son has apparently no religion at all. I think therefore that I should procure for them a dispensation *super impedimento disparitatis cultus.* Now the man always runs away when I go there, as I have been attending his stepdaughter. I would hardly care to look to him for a renewal of consent, because he would not know what it was all about, and if they did renew their consent I would be uneasy about its being a valid consent. It would be hard enough to make the wife do the renewing, because she has lived with a man who was not her husband, before her present marriage, and is perfectly satisfied that the present marriage is all that it ought to be. I don't know whether I ought to get a dispensation *in radice,* or whether to get an ordinary dispensation and take advantage of what Sabetti says, viz., that the opinion seems entirely certain that the party who is ignorant of the impediment need not renew the consent in this one case—that a Catholic marry an unbaptized person. I never met this man, but his wife tells me he is a very good man, and once I became acquainted with him he would be glad to see me; but he would not understand about the impediment and might think that I was unnecessarily interfering in his private concerns. Should I get a *sanatio in radice,* or the ordinary dispensation, and will it be sufficient in the second case to have the wife renew her consent?

Answer. The cause of the difficulty about this marriage is the uncertainty of the husband's baptism. If he was never baptized, or if ever baptized, then never validly, there seems to have existed at

the time of his marriage to a Catholic woman a diriment impediment *disparitatis cultus,* which was not removed by a dispensation, since we suppose that they were not married by a priest, and which rendered any marriage with a baptized woman invalid. That the man, and even the woman, were ignorant at the time of the impediment and its effect, did not stay its operation of invalidating the marriage. Their marriage consent may have been perfectly valid and sufficient—*qua consensus*—still it could not create a valid marriage contract, because it was vitiated or rendered inoperative by reason of the impediment.

In the present case the man's consent was valid, because he knew nothing of the impediment. It would seem also that the woman was ignorant of any diriment impediment, and at the time of the marriage gave a valid consent. "In dubio standum est pro valore." In case, therefore, that it be fully established that the man was never baptized, and it be impossible or extremely difficult to bring about a renewal of consent, a *sanatio in radice* may be procured and applied without renewal of consent on either part; or better still, application should be made to Rome, according to the Holy Office, if the parties were married without a dispensation *super impedimento disparitatis cultus,* and the baptism of one of the parties was in doubt at the time of the marriage, but afterward was proven to have been no baptism at all. In this case Rome will advise what course ought to be pursued in each instance. If the woman was aware, at the time of her marriage, or has become aware since, that her marriage was invalid on account of a diriment impediment, she must renew her consent, since the consent that she gave at her marriage was worthless on account of her knowledge of the impediment, or has become worthless since, owing to such knowledge, and therefore can not be said to *endure,* so that it might be

healed, since it never existed or has ceased to exist. Therefore it must be *renewed, i. e.,* a new consent must be given or there can be no valid contract. But all this reasoning has proceeded on the assumption that there existed from the beginning of this marriage a *sufficient* impediment to have invalidated the marriage. Now is such really the case? Is it certain that this man was never baptized? Is his baptism sufficiently doubtful to create a presumption against the validity of his marriage? No, by no means. It is not certain that he was never baptized. He himself does not know anything about his baptism, but his mother was a Methodist, and the Methodists as a religious body baptize validly. This fact alone creates a presumption, according to the decisions of the Congregation of the Holy Office, in favor of the man's baptism, *in ordine ad validitatem matrimonii contracti vel contrahendi.*

Only in cases where it is *perfectly certain* that one of the parties to a marriage contract was never validly baptized, can there be question of the impediment *disparitatis cultus.* In our case there is no such certainty. The whole question must, therefore, be solved on other lines. There is well founded doubt whether this man was ever validly baptized. Upon investigation the doubt remains. It can not be said with certainty that he *was* baptized, and it can not be said with certainty that he *was not* baptized. It is a case of *"baptismus dubius."* Now this man, only doubtfully baptized, marries a baptized woman, before a magistrate or a non-Catholic minister of the Gospel, without any dispensation *super impedimento disparitatis cultus.* Is such a marriage invalid, or is it valid, or is its validity doubtful.

"Num validum sit matrimonium, si de baptismo unius partis grave dubium oritur?" The solution of this question is to be found in the

decrees of the Holy Office, *v. g.,* decrees Nov. 17, 1830; July 7, 1880; Sept 18, 1890, etc,, etc.

According to these decrees, when the baptism of one of the parties to a marriage contract is doubtful, whether the doubt concern the *fact* of the baptism or its *validity,* "in ordine ad matrimonium tum contrahendum tum contractum, *ex praesumptione pro valido habetur.*" It is only in cases where it is altogether certain that no baptism was ever conferred, or if conferred, then invalidly, that the impediment *disparitatis cultus,* invalidates the marriage. Now if a person, regarding whose baptism there exists grave doubt, but whose baptism is *presumed* to have been valid *in ordine ad matrimonium,* is married to a baptized person, without a dispensation, then theologians consider such a marriage valid, even though, in reality, the person thus married was never baptized; they hold that in such cases the Church dispenses *super impedimento disparitatis cultus.* If, however, in the same case, when a doubtful baptism has been *presumed valid,* and a marriage is contracted, and afterward it be *established* on incontrovertible evidence that the doubtful baptism, thus *presumed* valid, was in reality no baptism, then recourse must be had to the Holy See, which will decide what is to be done in each particular case.

For determining when a baptism may be presumed valid, *in ordine ad matrimonium,* the Holy Office lays down the following rules:

1. If the person, whose baptism is in doubt, belonged to a sect which does not insist, in its ritual, on the essential form and matter of baptism, then each case must be examined separately.

2. If the person belonged to a sect whose ritual does prescribe the essentials for a valid baptism, then the baptism of such a person is presumed to have been valid, and no further investigation is necessary.

3. If, upon examination, in either case, the baptism continues doubtful, then it is *presumed* valid, *in ordine ad validitatem matrimonii.*

A general rule of the Holy See in this matter is: *Baptismus dubius in ordine ad matrimonium contrahendum, vel jam contractum, haberi debet ut validus.*

In conclusion, therefore, we say that this Catholic woman's marriage to this doubtfully baptized man, although entered into without a dispensation, is to be presumed valid in the eyes of the Church until it is proven invalid.

XII. A CASE OF THE IMPEDIMENT OF CONSANGUINITY

Titius and Bertha desire to contract a valid marriage, and to this end they consult their parish priest. Now the parish priest is aware of a persistent rumor to the effect that Titius and Bertha are related to one another "primo gradu lineae collateralis": in other words, that they are brother and sister. He refuses to marry them until he shall have first investigated this rumor and discovered the ground on which it rests. Upon investigation, he finds that the grounds for the suspected relationship are the following:

1. Public report: all the people of the neighborhood believe that Titius and Bertha are brother and sister.

2. Bertha's mother, in bringing suit against Sempronius for the support of Bertha, swore that Bertha was his child, although Bertha's mother was not married to Sempronius.

3. Sempronius, on his death bed, acknowledged that Bertha was his child, and desired that it be so entered on the baptismal record.

Sempronius married Anna, another woman, who bore him Titius, who now desires to marry Bertha. After the death of Anna, Titius' mother, Sempronius, his father, married Bertha's mother.

The parish priest, discovering this to be the case, thought that the grounds for suspecting that Titius and Bertha might be brother and sister were sufficient to justify him forbidding them to marry. Accordingly, he refused to marry them, and forbade them, under pain of having their marriage annulled, to attempt to get married. But this did not deter the young couple from endeavoring to carry out their purpose of getting married. The whole case was, therefore, brought before the bishop. Now Bertha's mother appears be-

fore the bishop's court and makes affidavit that Sempronius was not Bertha's father: that when she stated that he was, she had simply lied, in order to keep Sempronius from marrying another woman, and to get support from him for her child. That if Sempronius declared on his death bed that Bertha was his child, he did so at her most urgent prayer in order to remove the stigma from her, who was then his lawful wife, and from her daughter: but that there was no truth whatever in Sempronius' statement.

In the meantime, however, Titius and Bertha are living together as husband and wife and have children. Bertha's mother is nearing death and desires very much that Titius and Bertha should be married validly and licitly in the church before her death. In this extremity the whole situation is laid before the Holy See, with the prayer that the Holy See would deign to determine authoritatively whether there were sufficient ground for suspecting the alleged relationship between Titius and Bertha, and therefore forbidding their marriage by the Church, or whether the grounds for the suspected relationship were insufficient in Canon Law, and that Titius and Bertha might be married by a priest.

To this prayer of Titius and Bertha the Congregation of the Inquisition, or the Holy Office, on April 6, 1906, returned the following answer: "After examining all the law and the facts in the case, the non-existence of the impediment of blood relationship is not sufficiently established, and, therefore, the marriage of the petitioners can not be allowed." This reply or decision of the Holy Office was approved by the Supreme Pontiff.

There is question here of a *doubtful* impediment, *impedimentum dirimens dubium.* A doubtful impediment is one whose existence or non-existence can not be established by a thorough investigation. The impediment may be doubtful, either because the interpretatior

of the law which creates the impediment, is doubtful and hence it becomes doubtful whether any such impediment exists in law. This is the *dubium juris.* Or it may be that the law and its interpretation are quite clear, and the doubt may be about the facts in a particular case, whether the facts are such as to warrant the application of the law or not. This is the *dubium facti.*

When the doubt concerns the existence of a law creating an impediment or its interpretation and application and the law be of ecclesiastical origin, then it is always lawful to contract a marriage, where such a doubtful impediment exists, because the Church supplies the defect, as Canonists say, and there is no danger of contracting an invalid marriage. This is the uniform practice in the Church, and the Church, cognizant of it, has never condemned it: therefore, constructively, the Church sanctions the practice.

But if the doubt concern the existence of a *divine* law creating an impediment, as, for instance, whether the divine law forbids a brother and sister to marry, or if the doubt concern the facts in the case, as, for instance, whether Titius and Bertha are really brother and sister, it is not lawful to contract marriage in such a case, because either the Church can not remove the impediment, if it be of divine law, or if the doubt concern the facts in the case, the Church does not wish to supply the defect, or rather positively refuses to supply it. Because the Church has held such marriages invalid, when, after they were contracted, it was fully established that an impediment did really exist. The reason why the Church does not permit marriages in cases where a doubtful diriment impediment exists, is that, generally speaking, an investigation will settle the doubt as to the existence or non-existence of the impediment. If, in any particular case, the investigation does not remove the doubt, then a dispensation is required, *ad cautelam,* because the Church

requires that the Sacraments be administered validly. If, however, the impediment be of the kind that the Church never dispenses, as in the case of Titius and Bertha, then the Church forbids the marriage, and does not grant a dispensation *ad cautelam.*

Whether the law forbidding a brother and sister to marry be a law of nature, or only a law of the Church, theologians are not agreed. But in this they are agreed, that if the law be only of ecclesiastical origin—*juris ecclesiastici*—it is one of the impediments that the Church never has and never will dispense. For all practical purposes, therefore, it is immaterial what may be the origin and nature of the impediment. In the case of Titius and Bertha the existence of the impediment is not altogether certain; but still it is sufficiently probable to render the marriage of Titius and Bertha a doubtful marriage, if the Church were to permit them to marry.

In the case of other diriment impediments *juris ecclesiastici,* the Church validates the marriage, by supplying the defect, or removing the impediment. But in the case of doubtful relationship in the first degree, *lineae transversalis,* the Church never supplies the defect, by removing the impediment, if it really exists, even though she may, according to some theologians, have power to remove it.

It can readily be seen what grave inconveniences would sometimes ensue if the Church followed any other course. Suppose the Church allowed Titius and Bertha to marry. It would be very scandalous, since all doubt as to their relationship has not been removed. Suppose, after their marriage, incontrovertible proof is produced that they are brother and sister. They will have to separate. The hardship of separating will be greater than the hardship of originally abandoning the marriage. Infinitely more so. And the scandal given and the harm done to religion!

XIII. A CASE OF RESTITUTION

Titius tells the following incident in confession. About a year ago, while a neighbor's house was on fire, he did his best to save as much furniture and other articles from the burning house as possible. When there was no longer any prospect of saving any more property, and the owner of the house was standing near Titius, he suddenly bethought him of a considerable sum of money that was still in the house, but did not dare go after it. He told Titius about it, saying: "Well, it goes with the rest." Thereupon Titius, taking a desperate chance, enters the building and secures the money at the risk of his life, but never lets on that he succeeded in saving it. The house was burned to the ground, and no one ever suspected for a moment that Titius has succeeded in saving the money. Titius felt no scruple about appropriating the money, as the owner had abandoned it as lost, and Titius thought he did him no damage in keeping it, because it would surely have been destroyed had not Titius saved it. Titius always thought that the money was lawfully his until within the last few weeks. Now his conscience troubles him, and as the amount was considerable, he desires to know what he ought to do in the matter. May he keep it, or must he return it?

ANSWER: Titius must restore the money to the rightful owner, but he may retain enough to indemnify himself for the risk he took in saving it and for whatever other damage he may have sustained. We can easily imagine how Titius was led to form a false conscience regarding the money, which permitted him to keep it. He said to himself, the owner abandoned all claim or right to the money when he said: "Let it go with the rest." And it would

have gone with the rest, that is, it would have been destroyed and lost to the owner had Titius not saved it. The neighbor is not any the poorer because Titius kept the money. Whether Titius saved it and kept it, or whether it was burned up, in any case it was lost to the owner. There is scarcely any doubt that a man who has not made a special study of the principles of justice and rights, would reason in some such way as above indicated, and thus become a *possessor bonae fidei.* However, we cannot call this money a *res derelicta.* The simple fact that it was in eminent danger of being destroyed, does not obliterate the original owner's right to it, or make it a *res derelicta.* Because it was in imminent danger of being destroyed and then was rescued from that danger does not transfer property rights in it, from its owner to the rescuer. Although it was on the point of being destroyed, it is still the property of its original owner, until it is destroyed or abandoned, and as such *"res clamat domino."* Eminent danger to property does not destroy the owner's right to the property, so that it becomes a *res derelicta.* Nor does the salvage of property that would otherwise be destroyed transfer the ownership of the property to the one who saves it. It is only when the owner does actually abandon his property and renounces all intention of claiming it any more than it becomes a *res derelicta,* and consequently *primi possedentis.* In the present case it can not be assumed that the original and rightful owner of a large sum of money renounced all claim to it as soon as he realized that it was going to be destroyed, or would willingly consider it as belonging to anyone else but himself in case it were rescued from the fire by human agency or through some chance of good fortune. Nor could the owner of the money be held guilty of acting *unreasonably,* in thus continuing to claim his property, even though he could not have saved it him-

self and had given it up as lost. It is still his money. The danger it was in has not destroyed his title to it, nor has the rescue of it created a new title of ownership in the rescuer. Therefore the money must be restored. When Titius fully realizes this obligation of restitution he will commit a mortal sin if he does not fulfil it within a reasonable time, if he is able to do so.

But he is not bound to restore *all* the money. He may retain a part of it to indemnify himself for the risk he took in saving it. This is quite reasonable and in harmony with the principles of justice. It is not so easy to determine the exact amount of indemnity that Titius is entitled to. In many countries of Europe, the amount is determined by statute and is generally ten per cent. of the whole amount found or saved. Ten per cent., therefore, we would say, let Titius retain as a reward for the risk he took in saving the money. It were very much to be desired that we had some such law, determining the reward for finding or saving property in the United States. We would even agree that Titius keep more than ten per cent. if he conscientiously thinks that ten per cent. does not represent the risk he took. Moreover, if Titius sustained any damage to his health or his clothing by saving this money, he is entitled to a reasonable indemnity for that also.

Only in the case of food or drink do the moralists make an exception to this general rule of restitution. *"Si fur rem in certo periculo remanentem consumpserit eodem loco et intra idem tempus quo praeviderit rem apud dominum aeque perituram,"* he is not bound to make any restitution. The reason is that an article has no value for the owner as long as it is not removed from the danger of destruction. If the food or drink be removed to a place of safety before being consumed, then of course they recover their value and must be restored, *quia res clamat domino.*

XIV. A WILL CASE

A man died recently and left a will, disposing of a small estate. The bulk of the estate was left to his children, but a bequest of one thousand dollars was left to a certain charity. The will was offered for probate, but was declared void by the court, because it was not drawn according to the requirements of the law, and the man was adjudged to have died intestate and his estate was ordered distributed according to law, as if he had died without making a will. The decree of the court, of course, canceled the thousand dollar bequest to the charity. Are the children, nevertheless, bound in conscience to comply with the known will of their father and donate one thousand dollars to the said charity? Or may they accept the decision of the court as discharging their conscience from any further obligation to pay this thousand dollars? These people are in poor circumstances, but they are conscientious Catholics, and desire to know what their strict duty is in this matter.

Answer.—This case comes under the general question of how far the civil law binds or discharges a man's conscience in the matter of justice. There can be no doubt that the laws of the state may and do bind in conscience, independently of the fact whether the thing it commands or forbids is already commanded or prohibited by the divine or natural law. Laws made by competent authority for the common welfare are binding in conscience.

This is true of the state as well as of the Church. The state is a competent legislative authority in civil affairs. If its laws did not bind in conscience, the citizens would be always at liberty to transgress its laws, made for the common good, whenever their transgression did not involve a transgression of the divine or

natural law, and thus defeat the common welfare and circumvent the ends of civil society. Especially is this true of state laws concerning property rights. The civil law, creating or transferring or extinguishing property rights, aims at promoting the common welfare, and nothing affects the security of the citizens or the permanence of the state more than laws regarding property. For the order and security of a community it becomes necessary at times for the civil law to create or extinguish or transfer claims and titles to property.

If the civil law, in accomplishment of this, might not bind the citizen's conscience, its purpose would be largely, if not wholly, frustrated. Just as the Church, for the promotion of the common good in religious matters, may make laws that bind in conscience, since the Church is a competent legislative authority in religion, so may the state, being a competent legislative authority in civil matters, make laws, that bind in conscience, for the promotion of the political and social welfare of the citizens.

Now the common weal demands sometimes that certain juridical acts be declared void of any legal value whatever, because they work harm to society, and if the purpose of the laws can not be secured unless they place a burden on the conscience, then, since the common welfare demands that they be enforced, they become binding in conscience. Thus a husband is not permitted by law to deprive his wife of her legal share of his property. If he makes a will or a conveyance of property, thus injuring her, the law nullifies or voids his act, as being inimical to the best interests of the community.

Now, if the voiding of the husband's act did not hold in conscience, the wife would not be allowed to vindicate her rights, and the law of dower would become inoperative, to the great detriment

of society. There is no doubt, therefore, that the civil law may wholly annul and make void, not only for courts of law, but for the court of conscience also, juridical acts of citizens, such as the conveying of property, for instance, if the common welfare demands it. In any particular case the intention of the lawmaker or legislature must be examined as to the value or force of formalities required by the law.

It is generally admitted, however, by the moralists that laws of the state voiding certain acts and performances of private citizens only void them civilly, or as far as the *civil* courts are concerned, unless it can be shown that it was within the contemplation of the law to void the act even in the court of conscience. State laws that transfer or extinguish property rights demand a strict and narrow interpretation, because being in restraint of the citizen's liberty they are *aliquid odiosum,* and, therefore, *strictae interpretationis.* Moreover, an act or a contract that is, by its nature, valid, must not be judged invalidated by the civil law, unless it is clearly the purpose of the civil law thus to invalidate it. But when a court does declare certain acts and performances of individuals null and void, then such acts and performances are void also in conscience, because otherwise the declaration of the court would be vain and idle, and public order and security would be put in jeopardy.

When contracts, therefore, as for instance last wills and testaments, are declared null and void by the civil law unless certain legal formalities are complied with, it is a probable opinion among theologians, and therefore a safe opinion to follow in practise, that the purpose of the law is to void such last wills and testaments only as far as the civil courts are concerned. Therefore, the heirs to an estate are not bound either in law or in conscience to observe the provisions of a will that has been declared void by the court;

and they may demand legally the return of any property that was conveyed under the will, because by so doing they are only enforcing their rights that they enjoy under the law. But on the other hand a beneficiary under a will that has been declared void by the law need not return the bequest until the court has declared the bequest to have been null and void and ordered him to return it.

In the case before us, therefore, the children of this man, whose will was thrown out by the court of probate, are not bound in conscience to give the thousand dollars to the charity designated by their father, because they may avail themselves of a law that is just and sound in principle, and made for the protection of society, but whose value would be destroyed if it did not bind in conscience. If, however, any part of the bequest had been already paid over to the charity, the charity could in conscience retain it until compelled by a decree of the court to return it.

XV. LIABILITY FOR DAMAGE DONE BY ONE'S ANIMAL

Is a person answerable in conscience, or *in foro interno,* for damage done by his animal? The case is this: A. had a dog that repeatedly chased and killed chickens belonging to B. B. had complained to A. about his dog, but, as it seemed, to very little purpose, because the dog continued to injure and destroy B.'s property. Finally B. killed the dog. Now, the dog was a valuable animal, worth many times more than the chickens, and A. is at present endeavoring to recover damages in the courts. Is A. justified in bringing suit to recover the value of the dog, or was B. justified in killing it? Which one of them ought to stand the loss of the chickens?

Answer.—In answering the foregoing questions, the confessor proceeds in quite a different way from the judge of a court of law, because, there is a very material difference between the *forum internum* and the *forum externum, i. e.,* between the court of conscience and the civil law court. The decision in a case given by the confessor will often differ very materially from the decision given by a judge in a court of law. In the *forum internum,* or court of conscience, in a case like this one, it is the *culpa theologica* that counts; in the civil courts, it is the *culpa juridica,* or the omission of the care which the law requires in the use of property so as not to injure others. When the confessor estimates a man's responsibility for injury done by the man's animal, his first concern is to ascertain whether the damage done by the animal is imputable to its owner as a *sin,* that is a *culpa theologica.* If the damage done was the result of carelessness, then was the carelessness *sinful?*

If there was no sin, then as far as the court of conscience, the *forum internum,* is concerned, there is no restitution to be made. The civil court, on the contrary, is concerned about the *culpa juridica,* that is to say, the civil judge is not concerned about the *sinfulness* of the accused's action of omission, but only about the *fact* of the omission of that care which the law requires of citizens in the use of their property so as not to injure others in person or property. Whether the omission of the proper care was *sinful* or not, is no concern of the civil court. The court endeavors to ascertain the *culpa juridica,* that is, in the present case, whether A. failed to take the care that the law demands that he take in the use of his property so as not to injure others. Whether A. committed a *sin* in failing to confine his dog is of no consequence in the civil court, provided it can be shown that he failed in the care required by the law. It is the only thing of consequence in the *forum externum.* A.'s carelessness in keeping and using his dog may have been wholly without sin; in fact there may have been no real carelessness at all, but only what is called constructive carelessness, nevertheless the court will hold him liable. The general rule of the law is that a person shall so use his property as not to injure another in person or property. Where a person uses his property so as to injure others, even though he be not guilty of any sin or criminal carelessness in such use, still if he fails to take the amount of care that the law says he must take, then he is guilty of constructive carelessness, and is liable. It is irrelevant that he did not intend to do the injury, that he did not actually foresee it, and was not guilty of sinful or criminal negligence in not foreseeing it; the fact remains that the injury was inflicted because the amount of care that the law ordains that people *must* and *shall* take in the use of their property, was not taken, and therefore A. is liable.

If a case like the present one, therefore, is being tried in *foro interno* by the confessor, and no sin attaches to A.'s neglect to confine his dog, then no reparation can be required of A. in *foro conscientiae, ante setentiam judicis;* whilst, if this same case is argued in the civil court, the fact that injury resulted from the use which A. made of his dog will be *prima facie* evidence that A. did not employ such care as the law directs, and the court will so find, until proven otherwise.

This rule of the law, although it may work a hardship in some particular instance, is just and wise and reasonable, as regards the whole community, because it compels persons owning property to use it in a reasonable and just manner so as not to injure others, and were it not for this disposition of the law, a great deal of injury would be done to life and property through carelessness and neglect, and the social order would be very considerably disturbed. Reparation imposed by the law for injury done to others in the use of one's property, is just and reasonable and must be made.

According to the statute law, a dog is a *tame* animal and therefore the owner must know of his vicious habits to be held liable for damages done by him. But where the dog was upon the premises of another and did injury, the owner was held liable by the court, although without knowledge of the dog's bad habits. In case a dog kills or wounds sheep or lambs, the statute law makes the owner of the dog liable for the value of the sheep killed or wounded by the dog, whether the owner knew of its vicious habits or not, even though the sheep be at the time trespassing. This refers of course only to the killing of sheep or lambs. The dog's propensity to chase and kill such animals is so universally well known, that the law supposes every owner of a dog to have knowledge of it and holds him liable for any injury resulting therefrom. In cases where other

property is injured by a dog, knowledge of the dog's vicious habit must be proven against its owner, before he can be held liable. The liability of the owner or keeper of any animal for an injury committed by it is founded upon negligence. Any person is justified by the law in killing another's dog, where the dog is dangerous or ugly, and his owner knew it, and the dog is found running at large or has been bitten by a mad dog; when it attacks one's domestic animals on his land, or when it attacks persons or in any way becomes a nuisance; when in the act of chasing, worrying or wounding sheep, unless such chasing, etc., be done by the direction or permission of the owner of the sheep, or by his servant. But no one has a right to shoot a dog because he has been trespassing on his land, although he may have put up a sign or notice on his land that he would do so.

The confessor, therefore, if we may be allowed to repeat, distinguishes between a *culpa theologica* and a *culpa juridica. Culpa theologica* is a real sin, either mortal or venial; *culpa juridica* is the omission of the care which the law requires of persons in the use of their property so as not to injure others, whether the omission be sinful or not. Very often such omission will be sinful: then it becomes *theologica;* but it will also often happen where it is not sinful: then the theologians call it *culpa mere juridica.* The principle insisted on in moral theology is this: "Ut actio damnificans inducat obligationem restitutionis, requiritur ut sit *theologice culpabilis;* nemo enim obligatur in conscientia ad reparandum damnum, nisi illatum fuerit in conscientia." No one can be held liable for the results of involuntary actions. Now only voluntary actions can be sinful. If an action is not sinful, although injurious, then it is not voluntary *qua* injurious, and one can not be held answerable for the injury. The injury done may be *voluntaria in se* or else *voluntaria*

in causa, or altogether involuntary. A person may intend the injury resulting from his action of omission or he may not intend it, but still foresee it as necessarily resulting from his action or omission, which action or omission is done for some other purpose and not to cause injury. In this latter case, if the injury is foreseen and no sufficient cause is present to justify its being allowed to happen, it is imputable as sin.

Now let us apply all this to the present case. It may be said, then, that it is lawful to kill another's dog if he is injuring one's property, but only on certain conditions. These conditions are: (1) Killing the dog must be the only way open to us to stop the injury. If the injury may be prevented by notifying the owner of the dog, etc., then in conscience it is not lawful to kill it; (2) the injury done by the dog must be a *grave damnum;* (3) the primary purpose of the killing must be the protection of one's property, and not the injury done to another. These conditions are required *in foro interno;* for the *forum externum* all that is required is proof that the care required by the law was or was not taken in using one's property.

The confessor must determine whether A. was guilty of *sinful* negligence in the keeping and using of his dog. According to the statute law he is liable for carelessness and may be compelled to repair the injury resulting from such carelessness. The dog in killing B.'s chickens becomes a nuisance, and may be killed and damages recovered from A.

But before the matter is brought into court, what is A.'s duty? It will depend on the nature of A.'s carelessness in keeping his dog. If A. was guilty of *sin* in being careless, then he is responsible in conscience for the injury done by his dog. A. had been notified of his dog's vicious habits and should have so guarded that he could not injure another's property. In neglect-

ing to do so, he evidently failed in his duty and committed a sin, and must now make reparation.

As B. complained to A. about his animal to no purpose, and if an appeal to the officers of the law would have done no good, then if the injury that was being done by the dog was a *grave damnum,* B. was justified in conscience in killing the dog to protect his property. *Vim vi repellere licet* is an axiom of the law. Of course, if there had been any other less injurious way or means of preventing the injury to A.'s property, B. would have been obliged in conscience to adopt it. But under the circumstances there does not seen to have been any other way of stopping the damage. B. has a right to insist that A. shall so use his property as not to injure him, and he has a right to recover damages for the injury done.

He has a right also to resist the suit brought by A. to recover the value of his dog. At the same time, if the court should fine him for killing the dog, he will be obliged in conscience to pay, because the court is a competent authority to determine the question of the justifiability of the killing of A.'s dog.

In regard to A., he is bound in conscience to make restitution for the injury done by his animal, because he was evidently guilty of criminal negligence in the way he kept his dog. But if as a matter of fact there was no sin in his carelessness, then, *ante sententiam judicis,* he is not bound to make restitution.

XVI. SECRET COMPENSATION

A man working for a railroad company compensated himself secretly to the amount of about one hundred dollars. He did so at the suggestion of fellow-workmen, who convinced him that he was doing more work than his weekly salary paid for. Prior to being advanced to his present position, this man knew the nature of the work that would be required of him, and the long hours necessary to do the work. This happened several years ago. Now, for some months back, this man has been trying to get an increase of wages from the company. The matter has been taken under advisement by his superiors before whom such matters come for consideration, and they seem to have practically admitted that he is entitled to an increase of ten dollars per month. However, they have been procrastinating now for five months, and are not likely to give the increase until spring, because, this man says, they know that the winter is a bad time for a man to quit work, that a man can not well better himself at this time, and therefore he will not give up his present employment. Now, suppose that the time runs on long enough before they increase his wages, and the total amount to which he thinks himself entitled amounts to one hundred dollars, would this man be justified in not restoring the hundred dollars already taken?

Answer.—According to the moralists very definite conditions must be verified before occult compensation or secretly recovering what one believes to be one's own, can be considered lawful in conscience.

1. *Ut debitum sit verum.* Our claim must be founded in *strict justice,* and not merely in gratitude for work well done, or in promises to remember us in one's will, etc.

2. *Ut debitum sit certum.* If there be any reasonable doubt whatever that we have no strict claim in justice, then *possession is nine-tenths of the law, i. e.,* the party from whom we endeavor to recover is in possession, and law and equity favor him, and he has a right to keep what he has in his possession until it shall be proven beyond reasonable doubt that it belongs to another. If this were not so, hallucinations would prove a prolific mother of thefts.

3. *Ut debitum aliter obtineri non possit.* The public peace and the welfare of the social structure require that debts be collected through the channels created by custom and law, and only when these are inadequate can recourse be had to secret recovery.

4. *Ut damnum debitoris vel tertii caveatur.* We may injure the debtor in secretly recovering from him if we expose him to the danger of paying the debt twice, or leave his *conscience* charged with the debt, when in fact the debt is discharged. A third person may be injured by being suspected of dishonesty, etc., and thereby suffer loss of position or legal prosecution.

In regard to employees the moralists say: *Ultra salarium, de quo pactum sit, modo saltem infimum sit, non licet se compensare; nam ultra pactum, in quod ipse consensit, nil ei debetur.*

Where no fraud or deception or force has been employed, and the nature of the work was sufficiently understood, and the employee was not driven by stern necessity to agree to work for a wage that is manifestly unjust, there can be no room for secret compensation. If, in the course of his employment, the work required of him should suddenly become more dangerous than could have been foreseen, or much more arduous, as, for instance, night work instead of day work, and the man could not very well get another position immediately, then he might recover secretly. Applying these conditions to the case before us, we are forced to

admit that the hundred dollars that this railroad employee took was not a *debitum verum,* nor a *debitum certum,* and that this employee had no strict right, founded *in justice,* and beyond all reasonable doubt, to the said money. The pay that he was receiving from the railroad company was evidently not *infra minimum,* and if it were, he was not obliged by extreme necessity to work for it, since he could have found other work to do, and since he knew beforehand the nature of the work that was required of him and the wages he was to receive for it. He agreed to do the work for the wage of his own free will and not being constrained, and with full knowledge both of the labor demanded of him and the recompense promised. That was a *contractus onerosus,* entered into without fraud or deception or force, and the employee had no right therefore to alter its terms, without the consent of the other party to the contract. The hundred dollars must be restored to the railroad company. It is evidently their property and *res clamat domino.* This we say in view of the first part of the case. But what of the second part? Before coming to the second part of the case we will call attention to a condition, in connection with this first part of this case, existing in almost every large city of the United States, *viz.*: the dishonesty of street railway employees. There are 3050 conductors employed on the New York City railway lines. In the year 1904, 3491 were discharged, of whom 3436 were in the service less than a year. In 1905, 3019 conductors were discharged, of whom 2864 had been less than one year in the service. In 1906, 4976 conductors were discharged, of whom 4776 had been less than a year in the service. In the first six months of 1907, 3265 have been discharged, of whom 3144 were in the service less than one year.

The tremendous extent to which these discharges have been for dishonesty or stealing is indicated by the following figures:

Year	*Total discharges*	*For dishonesty*
1904	3491	3017
1905	3019	2448
1906	4976	3924
1907 (six months)	3265	2792
1907 (estimated)	6530	5584

In the present year, therefore, if the average for the first six months is carried out, the entire force of conductors on the surface lines will be discharged virtually twice over for dishonesty alone. This means a loss to the surface railway company of New York City, inclusive of fares not collected, of more than ten per cent. of its gross income, or upward of two million dollars a year. Various statements of what this system of self-compensation was worth to individual men have been made up, but only as estimates. One man high up in the councils of the surface railway company said the other day that a former valet who was put in on the road as a motorman found that his share of the daily profit was from $2.00 to $3.00 under normal conditions. Several months ago there was a case in the divorce courts in New York City in which the wife of a city railway conductor was suing for alimony, and in her bill charged that although her husband's salary from the railway company was only $18.00 a week, he ought to pay alimony on a $50.00 a week basis, as he "knocked down" $35.00 a week on the side. There was a disposition to believe at first that this was an exaggeration, but subsequent investigations bore out the facts. The ordinary reason advanced to justify this dishonesty is that the

men are not being paid sufficient wages and therefore are obliged to recover secretly. On the other hand, it has been asserted in the investigation of traffic conditions by the Public Service Commission that the deficit of the New York City railway system in the fiscal year ending June 30, 1907, was over $3,000,000. In other words, although the gross receipts for the year 1906 were $21,937,943, there was a deficit of $2,212,997, two millions of which was caused by dishonest employees. So easy is it for men to persuade themselves that they have a right to recover by secret compensation! (Cf. *New York Times,* November 17, 1907.) How earnest, therefore, ought not the confessor to be, especially before the fact, in disabusing men of this false conscience.

In regard to the second part of the railway employee's case, namely, would it be permitted to this man to keep this hundred dollars, or any portion of it, amounting to $10.00 per month, for the time that the railway company acknowledged that his pay ought to be increased $10.00 per month, but nevertheless failed to increase it?

If the railroad company has really acknowledged that the work of this employee is worth $10.00 per month more than he is receiving in wages for it, and if the true reason why the company does not increase his pay at present, is because they feel that he is obliged to work for them anyway, then they are taking advantage of his need to defraud him of what they freely confess in justice belongs to him and which they unjustly keep back from him, and therefore he might be permitted to deduct from the sum he owes the railroad company the sum of $10.00 for every month that the company fails to increase his pay since the time that they acknowledged that his wages ought to be increased to that extent. If the company's delay covers more than ten months, we would not

permit the man to resume recovering secretly, but we would advise him to change his employer if he thought he could not work for the wages he contracted for. If, however, the reason why the railroad company did not at this time wish to increase his pay, was because they could not very well afford to do so economically, owing to the stringency of the money market for the last four or five months, then we do not think that this employee would be allowed to reimburse himself from the money he owes the company. In this case the company would not be taking undue advantage of this employee's need, but would be simply refusing to pay more wages for a certain kind of work than they could afford to pay and which they could get other men to do just as well for the present wage, which is, we suppose, not *infra minimum justum.*

XVII. EXTREME UNCTION

A priest is called to a sick person, living a considerable distance from the church. The road is very heavy and the night very cold and stormy. When he finally arrives at the sick man's house he finds the sick man unconscious. He gives him conditional absolution, and then proceeds to anoint him, as he cannot receive Viaticum. But upon opening the oil stocks he discovers that instead of the *oleum infirmorum,* he has brought with him the other two oils! What shall he do? It will require several hours to send to the church for the oil of the sick. The man may be dead before that. The priest quickly dispatches a messenger for the *oleum infirmorum,* and in the mean time gives the sick man Extreme Unction with the oil of catechumens. When the messenger returned with the oil of the sick, the priest repeated the Sacrament *sub conditione,* and the man expired without regaining consciousness. Was the Sacrament valid with the *oleum catechumenorum,* or was the second administration *sub conditione* necessary or even lawful?

Answer.—The Council of Trent defines the *matter* of the Sacrament of Extreme Unction to be: *"Oleum ab episcopo benedictum."* The exact words of the council are: "Ex apostolica autem traditione, per manus accepta, intellexit Ecclesia materiam esse oleum ab episcopo benedictum" (Sess. 14).

The oil, blessed by the bishop, is understood to be *oil of olives;* for the word used simply and without qualification has this meaning and this has been the uniform teaching and practise of the Church throughout the centuries. "Quia oleum principaliter nominatur olivae liquor," says St. Thomas, "cum alii liquores solum ex similitudine ad ipsum olei nomen accipiant, ideo oleum olivae etiam debet esse, quod assumitur in materia hujus sacramenti" (Suppl.

q. 29). Pope Eugenius IV, decre. pro Armenis, says: "Quintum sacramentum est extrema unctio, cujus materia est oleum olivae per episcopum benedictum."

"Oleum olivae idque benedictum ad unctionem extremam adhibendum esse, retinent Orientales, nisi Armenos forsan excipias, qui aliquando butyrum loco olei usurpasse videntur" (Denzinger, I, 185). Oil of olives therefore is required for the valid administration of the Sacrament of Extreme Unction. It is further required for the validity of the Sacrament that this oil of olives be blessed by the bishop. The words of the Council of Trent are clear: "Intellexit Ecclesia materia esse *oleum ab episcopo benedictum*" (Sess. 14). The proposition or statement that Extreme Unction might be validly administered with oil that had not been previously blessed by the bishop, was condemned by Paul V (Jan. 13, 1655), as a *"propositio temeraria et errori proxima,"* and this condemnation was reaffirmed by Gregory XVI, in 1842, who declared that even in extremest necessity a priest could not validly anoint the sick with the oil blessed by himself, unless authorized to bless it by the Supreme Pontiff. As far back as the Council of Carthage, A. D. 390, it was forbidden to a presbyter to bless the oil of the sick (ap. Gratian, c. xxvi, q. vi, c.l.).

The Council of Hispalis (Seville), A. D. 619, also reserves the consecration of the sick man's oil to the bishop. In the Greek rite the oil is blessed by simple priests; and there can be no doubt that this benediction suffices. Even in the Latin rite, the benediction of the oil by a simple priest is sufficient, provided the priest be expressly or tacitly commissioned by the Pope to bless it. "Res videtur exploratissima, quam nemini liceat in questionem adducere" are the words of Benedict XIV (de synod. dioec. l. 8, c. 4). The Roman rule and the Western rule that now follows it, require that

the oil be consecrated by the bishop, and this is required not merely by precept but for the validity of the Sacrament (St. Lig. n. 709).

The oil, therefore, required for the Sacrament of Extreme Unction must necessarily be (1) oil of olives; (2) blessed by a bishop.

Now there arises the question, and it is on this that the present case hinges, must the olive oil, blessed by the bishop, be blessed especially for this Sacrament in order to be valid, or will oil, blessed by the bishop for any purpose and with any form of consecration, suffice?

Upon this question the theologians do not agree. Some maintain that a special blessing is required for the oil of the sick, that it must be blessed for this special purpose, namely for the annealing of the sick. Others maintain that any blessing or consecration by a bishop is all that is necessary to make the oil valid although perhaps illicit for Extreme Unction.

Suarez maintains that oil blessed in any way by the bishop is sufficient for the validity of the Sacrament, because it is still true to say that it is "oleum ab episcopo benedictum" (Disp. 40, g 1, n. 9). These theologians maintain that *oleum ab episcopo benedictum* is what the Council of Trent declares to be the *materia valida* of Extreme Unction, and if the council meant by *oleum ab episcopo benedictum* the special oil of the sick, *i. e., oleum infirmorum,* the council would have so specified.

St. Alphonsus calls this opinion probable, and in fact, both by reason of the external authority of the theologians that favor it, as well as the internal evidence on which it rests, it may be said to be solidly probable.

According to this opinion, in a case of necessity, the *oleum catechumenorum* or the *S. Chrisma* might be used validly for the

administration of Extreme Unction instead of the *oleum infirmorum,* because both of them are olive oil blessed by the bishop.

But by far the greater number of theologians are against this opinion, and maintain that the *oleum infirmorum* is the only valid matter for the Sacrament of Extreme Unction. The oil used for the Sacrament of Extreme Unction, they say, must be blessed by the bishop for this special purpose. No other oil, even though blessed by the bishop, will suffice. According to them, it is useless to give even conditional Extreme Unction with the oil of catechumens, for that is not blessed for the special purpose of annealing the sick. To vindicate their position, these theologians appeal to the general practise of the Church and to the decisions of the Roman Congregations, which declare that there is a strict duty to repeat the Sacrament of Extreme Unction, if by chance or accident it has been administered with any other than the *oleum infirmorum.* This opinion, also, in the view of St. Alphonsus, is probable.

In view therefore of this diversity of opinion among the theologians regarding the necessity of using only *the oil of the sick* in the adminstration of the Sacrament of Extreme Unction, we are obliged to agree that any other oil, even though blessed by the bishop, as for instance, *oleum catechumenorum* or *S. Chrisma,* is *materia dubia* for Extreme Unction and may never be used except in a case of grave necessity. For in the administration of the Sacraments it is not allowed to follow probable opinions. Pope Innocent XI condemned the proposition: "Non est illicitum in Sacramentis conferendis sequi opinionem probabilem de valore sacramenti, relicta tutiore." Hence, in case of necessity, but not otherwise, Extreme Unction might be adminstered conditionally with Chrism or oil of catechumens. If, however, the *oleum infirmorum* can afterward be had, the Sacrament should be again conferred. St. Alphonsus

does not make mention of *a condition* in repeating the Extreme Unction, neither does St. Charles, in ordering a repetition in case of mistake as to the oil, even though the oil used had been the Chrism or oil of catechumens. Lacroix, however, says that the Sacrament should be repeated in this case *sub conditione* (l. VI, pars ii), and all recent theologians are of the same opinion (*cf.* Lehmkuhl II, 570).

In the case before us, there was a grave obligation for the priest to repeat the Extreme Unction with the *oleum infirmorum, sub conditione.* The priest did right in giving Extreme Unction with the oil of catechumens, because it was a case of necessity.

The sick man had indeed been absolved conditionally, but such an absolution must remain *dubia,* since no external sign of a confession had been made and absolution without some kind of a confession of sin, the theologians say, is *dubia.* But as regards Extreme Unction, no confession of sin is necessary, only let there be imperfect contrition for sin in the heart if it be impossible to make a confession, then Extreme Unction gives *primam gratiam,* or sanctifying grace, and this not *per accidens,* as the Holy Eucharist, but *per se et ratione institutionis.*

The priest did right, therefore, in giving Extreme Unction with *materia dubia in casu necessitatis, deficiente materia certa,* but afterward the Sacrament must be repeated *cum oleo infirmorum,* to make it certain.

All the more so was the priest bound *sub gravi,* to repeat the Extreme Unction, since the absolution given the sick man was *absolutio dubia,* he not having retained consciousness and not being absolved sacramentally beyond all reasonable doubt.

If there were any danger of shocking any of the faithful present, by a repetition of Extreme Unction, the priest might obviate it by requesting to be left alone with the sick man for a few moments.

XVIII. CONCERNING A WILL CASE

My Dear Doctor:

In the Homiletic Monthly and Catechist, Vol. VIII, No. 2, page 170, you try to solve a Casus Conscientiae, a Will Case.* Now, my dear doctor, I claim that nearly everything you say in that article is absolutely false. You say: "There can be no doubt that the laws of the State *may* and *do* bind in conscience." That the laws of the State *may* bind in conscience, transeat; that they *do* bind in conscience I deny, and I prove it. According to Moral Theology, lex non obligat ultra mentem legislatoris. Atqui; no State legislators ever intended to oblige any man in conscience to observe any law. Therefore civil laws do not oblige in conscience. Our civil lawgivers do not acknowledge any conscience. All our civil laws are penal laws, and no more. Hence any citizen is allowed to violate any law of the State without committing a sin, for the law knows no sin.

If the laws of the land bind in conscience, then a divorced man may marry a divorced woman!

While the heirs in this case can not be compelled by law to pay the thousand dollars to charities, yet they are bound in conscience to do so, if it can be proven that it was the will of the father that one thousand dollars should be given to charities.

Sacerdos.

Answer. It is our constant endeavor to solve the Cases of Conscience appearing in the Homiletic Monthly according to the principles of sound Catholic morality, as expounded by the great theologians of the Catholic Church. Upon the teachings of St. Thomas, St. Liguori, Cajetan, Suarez, Lugo, Bellarmine, Lessius, etc., and not upon any notions of our own, if we have any, do we rely for a solution of the difficulties presented to us. We are aware that the solutions we give of Cases of Conscience may not always meet with the approval of everybody, nevertheless, they will be found, upon examination, to rest upon the teachings of some, if not all, of the great theologians, whose orthodoxy and learning are both above suspicion. Thus in the solution of the

*The Case found on page 65 is referred to.

Will Case, to which "Sacerdos," in the above communication, takes exception, we did but solve the Case according to the principles laid down by St. Thomas, 1-2, q. 96, art. 4; Suarez, de Leg. l. III, ch. 21; Bellarmine, de membris Ecc. militantis, l. III, ch. 11, etc., and more recently by Bouquillon, theol. fund. de lege civili, ch. 1; Noldin, de VII praecept. n. 137; Tanquerey, de Contract. n. 617; Aertnys, l. I, tract. III, n. 144, etc.

Suarez, *loc. cit.,* treating of the power of the civil law to bind the conscience, says:

"In hac re fuit sententia negans posse magistratus civiles per leges suas in conscientia obligare. Ita sentiunt a fortiori heretici, qui negant esse in principibus veram potestatem ad leges ferendas." Among Catholics, he continues, Gerson, in a work on the spiritual life, seems to deny the power of the civil law to bind the conscience, but without any good reason. Then he says: "Dicendum vero est legem humanam civilem habere vim et efficaciam obligandi in conscientia. Haec est sententia communis Catholicorum, ut videre licet in divo Thoma cum expositoribus.—1, 2, q. 96, art. 4, etc. Here follows a long list of theologians, whom Suarez quotes as justifying him in asserting that it is the common opinion of Catholic theologians that the civil laws bind in conscience. Among those whom he quotes we find Soto, Bellarmine, Navarrus, Salmeron, S. Antoninus, etc. Hereupon Suarez makes the statement that the assertion that the civil laws bind in conscience is *de fide,* or *proxima fidei.* "Et videtur assertio vel de fide, vel proxima fidei; nam fere aperte colligitur ex illo Pauli ad Roman. 12: *Qui potestati resistit, Dei ordinationi resistit: qui autem resistunt, sibi ipsis damnationem acquirunt.* Quod de damnatione etiam apud Deum intelligit ibi Chrysost. hom. 23. Item additur ibi ratio his verbis: *Dei enim minister est,* unde colligitur illi esse

obediendum, *non tantum propter iram, sed etiam propter conscientiam;* ac si aperte diceret, non solum propter timorem poenae, sed etiam propter vitandam culpam; hoc enim in rigore significat particula illa *propter conscientiam,* ut Ambros. Anselm. div. Thom. Theoc. et fere alii intellexerunt." The reason why the civil law binds in conscience, says Suarez, is because the legislator in making it acts as the *minister of God, and by the power which he receives from God.* The divine law and the natural law require that the laws made by legitimate rulers be obeyed. Yet, observes Suarez, we must not think that it is the divine law or the natural law that binds our conscience to obey the civil law; it is the civil law itself that places the burden of obedience on us. "Nec vero inde sequitur vel culpam illam (disobeying the civil law) esse proprie contra legem naturae, vel obligationem ad actum praeceptum lege humana esse naturalem, quia, ut in superioribus tetigi, lex humana se habet ut causa proxima et secunda, quae nititur in lege aeterna tamquam in causa prima; effectus autem, qui proxime est a causa secunda, ita ut a prima non fieret, nisi per illam, secundae simpliciter tribuitur, *et ideo obligatio haec, etiamsi sit in conscientia* (of obeying the civil law) *simpliciter est a lege humana."*

Suarez' eighth proposition (l. III, ch. 21) is this: *Praedicta protestas est necessaria ad convenientem gubernationem reipublicae humanae.* As the wife is bound in conscience to obey the husband, and the son to obey his father, and the servant his master, and the monk his superior, so *a fortiori,* is the citizen bound in conscience to obey the laws of the state. "Et ratio a priori est, quia gubernatio sine potestate cogendi inefficax est, et facile contemnitur; coactio autem sine potestate obligandi in conscientia, vel est moraliter impossibilis, quia coactio justa supponit culpam, quod est valde proba-

bile, ut magis declarabitur in seq. et tractanda de lege poenali; vel certe est valde insufficiens, quia per eam non posset in multis casibus necessariis sufficienter reipublicae subvenire." The divine law and the natural law are altogether inadequate, being too indefinite and indeterminate for the government of a state. When the legitimate lawmakers, therefore, in any state, make just laws for the protection and well-being of the state, those laws are binding in conscience, by virtue of the human power that made them, *"obligant immediate ex vi potestatis legislativae humanae, quae obligationem illam in conscientia potest addere supra obligationem legis naturalis vel divinae"* (loc. cit.).

Omitting the intervening chapters, we come to ch. 27, "Utrum obligatio legis humanae, quoad gravitatem ejus, ex intentione legislatoris pendeat."

"Ut intelligatur punctum questionis, supponimus variis modis posse legislatorem se habere in ferenda lege; primo, ut simpliciter intendat legem ferre circa talem materiam, et non amplius: ******* in primo modo sine dubio lex obligat in conscientia, quia vera lex natura sua habet hunc effectum, si non excludatur; unde eo ipso quod intentio fertur ad veram legem, et hic effectus non excluditur, est sufficienter intentus, et efficitur per legem. Neque est semper necessaria formalis intentio obligandi in conscientia, vel sub mortali; imo vero hoc vix venit in mentem legislatoris civilis, et maxime in infidelibus, de quibus est eadem ratio. Idem est in voto et promissione, quia, si fiant, statim obligant in conscientia, licet promittens nihil de conscientia cogitaverit; idem ergo est in lege, neque est ulla ratio cur expressior intentio necessaria sit."

We have given here a mere outline of Suarez's teaching, nevertheless it is sufficiently clear from what we have quoted that Suarez maintains that the civil law *may,* and in fact *does,* bind in

conscience, even though the law-giver did not think about conscience or an obligation in conscience, when he made the law, and even though he be an infidel, and deny all conscience.

Cardinal Bellarmine's teaching is identical with Suarez's, as may be seen by a reference to his treatise *de membris Ecclesiae militantis*, bk. III, ch. 11.

St. Thomas, 1-2, q. 96, art. 4, asks: "Is the obligation imposed on man by human law binding in the court of conscience?" He makes answer as follows: "Laws enacted by men are either just or unjust. If they are just, they have a binding force in the court of conscience from the Eternal Law, whence they are derived. Laws are said to be just in respect of the *end*, when they are ordained to the general good; in respect of the *author*, when the law does not exceed the competence of the legislator; and in respect of the *form*, when burdens are laid upon subjects in proportionate equality in order to the general good. For as one man is a part of a multitude, all that every man is and has belongs to the multitude, as all that every part is, is of the whole; hence also nature inflicts loss on the part to save the whole. Under this consideration the laws that impose these burdens according to proportion are just and binding in the court of conscience, and are legal laws."

Dr. Bouquillon, sometime professor of moral theology in the Catholic University at Washington, was one of the most eminent of modern moral theologians. In his *Theologia mor. fund.* de lege civili, 222 ss. he says:

"Lex civilis vere moralis est, quippe quae non meram coactionem importat, sed obligationem producit in conscientia et coram Deo. Fertur enim auctoritate a Deo communicata, nomine Dei et a Deo sancitur. Sane in documentis inspiratis habemus principum potestatem esse a Deo, et principes esse Dei ministros, ab ipso missos;

proinde illis obediendum esse necessitate, propter Deum et conscientiam; consequenter eos, qui principibus resistunt, ipsi Deo resistere et damnationem sibi acquirere. Sancti Patres autem unanimiter docent sic audiendum esse superiorem, qui est Dei vicarius, quomodo ipse Deus, quia obedire superiori jussit Deus, et quia Deus a non obtemporantibus poenas haud leves repetet. Idem recta ratio facile evincit: licet enim lege civili homo immediate ordinetur ad solum bonum temporale, mediate tamen etiam ordinatur ad bonum aeternum, siquidem, juxta divinam dispositionem, temporale aeterno subservit: ideoque ejus violatio a fine avertit."

For every statement in the foregoing the learned author quotes the Scriptures and the Fathers. He proceeds:

"Obligationem in conscientia producit lex civilis *qua talis,* non autem solum quatenus legem naturalem, divinam aut ecclesiasticam continet et applicat; id evidenter colligitur ex textibus allatis. Producit autem obligationem in conscientia lex civilis *ipsa vi imperii,* non autem vi specialis voluntatis imperio additae; videlicet, ad obligationem sufficit ut superior intendat vere imperare, non requiritur ut expresse intendat obligationem in conscientia imponere; haec enim necessario sequitur ex imperio; *unde immerito nonnulli aliquando videntur dubitare de legum civilium obligatione in conscientia, eo quod moderni legislatores conscientiam, imo et Deum ipsum minime curent.* Praeterea obligationem producit lex civilis *ex se, propria efficacia,* et independenter ab Ecclesiae approbatione."

Tanquerey, de contract. ch. 1, says:

"Potestatem civilem tales leges (invalidating contracts) condere posse, omnes admittunt. Tota difficultas est in definiendo *quaenam* leges civiles ita obligent. Quando legislator id clare declaravit, nulla est difficultas; sed plerique hodierni legislatores explicite de

morali seu naturali obligatione legum sermonem non habent; unde ex scopo legis questio solvi debet; videlicet si bonum publicum postulat ut lex habeatur ut irritans etiam ante judicis sententiam, statim ut invalidus haberi debet in conscientia, etc."

In confirmation of this he refers to a decision of the Holy Office, given in 1873. The Italian government passed a law in 1866 requiring its creditors to accept paper money in payment, regardless of any previous contract to the contrary. The Holy Office was asked whether this law was *binding in conscience;* it answered, on January 21, 1873: "regulariter *affirmative,* nisi peculiares obstent circumstantiae" (Acta S. Sedis, t. VII, p. 211).

Aertnys, C. S. S. R., says: "Omnis lex humana, proprie dicta *semper* et *necessario obligat in conscientia* saltem ad aliquid. **** Neque refert civiles Legislatores infideles esse, qui non curant conscientiam; sufficit enim quod simpliciter obligare velint, eo ipso oritur obligatio in conscientia, quemadmodum docet Apost. ad Rom. xiii, 1, 2, 5, loquens de principibus ethnicis: "Omnis anima potestatibus sublimioribus subdita sit; non est enim potestas nisi a Deo; quae autem sunt, a Deo ordinatae sunt. Itaque qui resistit potestati, Dei ordinationi resistit; qui autem resistunt, sibi ipsi damnationem acquirunt. Ideo necessitate subditi estote, non solum propter iram sed etiam propter conscientiam" (de legibus, c. III n. 144).

Fr. Noldin, S. J., says: "De intentione autem hall nota: sicut necesse non est, ut legislator explicite intendat obligationem in conscientia imponere, ut lex in conscientia obliget, ita necesse non est, ut explicite intendat obliagtionem gravem imponere, ut lex sub gravi obliget; sicut enim intentio obligandi in ipso usu potestatis legiferae contineri censetur, pari modo legislator materiam gravem generatim etiam sub gravi injungere velle praesumitur. Quare

omnino tenendum est, etiam *legislatorem infidelem* condere leges in conscientia obligantes" (de legib. n. 137).

These quotations might be continued indefinitely, but sufficient have been given to make it clear that, according to Catholic theologians, the laws of the state do, as a rule, bind in conscience, even though the legislators be unbelievers and infidels, and have no concern either about God or conscience. Indeed, from a perusal of these same theologians, it will appear that, instead of *all* modern civil laws being merely penal, the great body of the civil law is *moral,* i. e., *binding in conscience,* and that the purely penal laws are very few when compared to the whole body of the law.

Among the laws of the state that bind in conscience are to be included many laws concerning the ownership, purchase and sale, etc., of property; the laws concerning the prescription of property, treasure trove, valuables found, certain of the laws invalidating contracts, and certain of the laws invalidating last wills and testaments. For example, Fr. Noldin says: "Leges civiles jura statuentes seu dominia transferentes, ordinarie ante omnem judicis sententiam in conscientia obligant ex justitia commutativa. Nam lex ab auctoritate competenti in bonum commune condita, *in conscientia* obligat. Atqui jura, quae ad bona fortunae referuntur, constituunt objectum justitiae commutativae; quare leges praeceptivae, quae jura civium de bonis fortunae statuunt, *ex justitia commutativa* obligant" (de VII, praecept. n. 347).

In like manner, the civil laws concerning treasure trove, invalidating the contracts of minors, excluding certain persons from the benefits of a will, etc., are all binding in conscience.

As a rule the dispositions of the civil law regarding last wills and testaments only affect the same civilly, *i. e., in foro externo, ante judicis sententiam.* "Si ergo," says Noldin, "infirmus morti proxi-

mus, viva voce donet alicui legatum, donatio, quippe carens forma legali, informis est: ideo haeres non tenetur solvere legatum et solutum juridice repetere potest, quia uti potest jure, quod a lege ei conceditur; sed neque legatarius tenetur illud reddere, donec haeres irritationem donationis per judicem impetraverit" (de vi legis civil. n. 3).

Fr. Aertnys, C. S. S. R., asks: "An lex indirecte irritans actum sive contractum temporalem, effectum sortiatur in foro conscientiae, ante judicis sententiam? Sententia probabilior affirmat, etc." "Ex dictis sequitur haeredem vel legatarium *ex testamento non solemni* posse tuta conscientia, antequam ullus possidet, accipere et retinere hereditatem vel legatum, quamdiu ab illo non abjudicatur; quia possidet certa voluntas defuncti. Similiter haeres *ab intestato* potest tuta conscientia ejusmodi testamentum non exequi, vel impugnare, et eo expugnato per sententiam judicis, obtinere relicta a testatore; quia possidet jus succedendi ab intestato, et uti potest remedio juris" (de legibus, n. 148).

The Will Case to which "Sacerdos" objects was solved according to these principles. It was a "testamentum, nullum propter legem civilem irritantem, ad causas profanas, cum legato pio ei inserto." Is such a last will and testament valid?

The first thing to be settled is, was the charity to which the testator desired to give one thousand dollars, a *vera causa pia?*

The second question was, were there at least two witnesses present when the testator signified his will, or was his will in writing?

Thirdly, was the beneficiary in good or bad faith?

From the details of the Case as presented to us, we could not settle these questions, and even had we been able to settle them, it is disputed by theologians whether a last will and testament

ad causas profanas, containing a bequest for a pious purpose, is valid by reason of the pious bequest, when it is invalid for the lack of necessary legal formalities. (Cf. any of the older or more recent theologians on this point.)

Since these things are so, we still believe that the solution of the Will Case here referred to was correct.

XIX. WASHING THE CHURCH LINENS

Father Paul, a young priest, is assigned to a parish where it is the practise for the sisters to wash the altar linens. Among these linens are the purificators and corporals. In the seminary it was taught that certain of the altar linens ought to be washed only by a man in sacred orders, and Father Paul remembers having taken his turn at this work after he had received subdeacon's orders. He desires to know whether it is only a pious practise for a man in sacred orders to wash the purificators and corporals, or whether there is any strict obligation for a priest or major-order man to wash them, or may they be turned over to the sisters together with the rest of the church linens to be washed and repaired by them.

Answer. I. The purificators, corporals and palls, when soiled, must be washed by a priest or deacon, or at least by a subdeacon. It is not lawful to give them to any one else, even to religious women, until they have been first washed, *at least once,* by a man in sacred orders. This is of strict obligation, and by no means a mere pious or becoming practise.

1. The third part of the decree of Gratian, in the Corpus Juris Canonici, treats *"de consecratione."* Distinctio I, canon 40, prescribes how the altar linens shall be washed. "Pallas vero, et vela sanctuarii, si sordidata fuerint ministerio, Diaconi cum humilibus ministris intra sanctuarium lavent, non ejicientes foras a sanctuario: et velamina Dominicae mensae abluant: ne forte pulvis Dominici corporis male decidat. Sindonem vero non foris abluant: et erit haec operanti peccatum. Idcirco intra sacrarium ministris praecipimus haec sancta cum diligentia custodire. Sane pelvis nova comparetur, et praeter hoc nil aliud

tangat. Sed nec ipsa pelvis velis apponatur lavandis, nisi quae ad Dominici altaris cultum pertinent. Pallae altaris solae in ea laventur, et in alia, vela januarum." In this canon, therefore, it is *commanded,* and not merely recommended, that the altar linens, when soiled, be washed by a deacon, assisted by clerics of lesser degree, *a Diacono cum humilibus ministris;* which does not mean that the clerics of lesser degree than the deacon may themselves wash the altar linens, but that they are to assist the deacon in the performance of this ministry. This canon of the decree of Gratian contains some prescriptions that have since been abrogated by the general practise obtaining in the Church. Thus, for example, the canon ordains that the linens shall be washed within the sanctuary, and that they shall not be removed from the sanctuary. Also that the altar cloths are to be washed in the same way as the other linens. But the general practise of the Church, abrogating certain of the provisions of this fortieth canon of Gratian's decree, does not extend to the washing of the purificators, corporals or palls, which must still be washed by a man in sacred orders. This appears from repeated answers of the Congregation of Rites. Again, in the rite of ordination of a subdeacon, as contained in the Roman Pontifical, the bishop admonishes the cleric, whom he is about to raise to the office of subdeacon: *Subdiaconum oportet pallas altaris et corporalia abluere.* According to a decision of the Congregation of Rites, September 12, 1857, this washing of the purificators, corporals and palls, since it is enjoined by the Roman Pontifical on the subdeacon, as one of the duties of his office, may not be committed to any persons not in sacred orders except by the Roman Pontiff himself.

2. The purificators, corporals and palls must be washed *by hand,* and not with instruments or by machinery. It is not required that

they should be altogether clean, when they leave the hands of the subdeacon, or that they should not be washed again, but nevertheless, the cleansing that they receive at the hands of the subdeacon should be a real washing, *vera ablutio*. According to the rubrics found at the beginning of the Missal, *de defectibus* (tit. x, n. 12), the corporals, purificators and palls should be washed *three* times, and each time, according to the common opinion of the rubricists, in fresh water. But these two extra washings are not considered preceptive, but only commendable, while the first washing is of strict obligation. This is evident, the rubricists say, from the canon of the decree of Gratian, as well as from the Roman Pontifical, both of which prescribe only one washing.

3. According to the decree of Gratian these linens are to be washed *intra sanctuarium*. The general practise of the Church, as well as the interpretations of the rubricists, take these words as meaning that these linens are not to be washed in *the houses of the laity*.

4. The linens are to be washed in a bowl or basin reserved for this sole purpose, and are never to be washed with any household linens. The words of the canon are explicit: *Sane pelvis nova comparetur, et praeter hoc nil aliud tangat. Sed nec ipsa pelvis velis apponatur lavandis, nisi quae ad Dominici altaris cultum pertinent. Pallae altaris solae in ea laventur, et in alia, vela januarum.*

5. The water used at least for the first washing must be poured into the sacrarium, according to the canon.

II. It is never lawful for sisters or other religious women to give the linens the first washing. In the office of St. Soter, as found in the Breviary for April 22, it is stated that the saint ordered that women of religious orders should not touch the altar linens. "Soter sancivit ne sacrae virgines vasa sacra et pallas attingerent."

The decree of Gratian, distinctio XXIII, canon 25, says: *Sacratas Deo foeminas, vel Monachas, sacra vasa vel sacratas pallas penes vos contingere et incensum circa altaria deferre, perlatum est ad Apostolicam Sedem: quae omnia reprehensione plena esse et vituperatione, nulli recte sapientum dubium est. Quamobrem hujus sanctae sedis auctoritate haec omnia vobis resecare funditus quanto citius poteritis censemus. Et ne pestis haec latius divulgetur, per omnes provincias abstergi, citissime mandamus.*

The same is gathered from the response of the Congregation of Rites, September 12, 1857. The Congregation was asked: "Utrum moniales seu piae foeminae vitam communem sub regula degentes, possint cum licentia Ordinarii abluere corporalia, pallas et purificatoria?" The Sacred Congregation answered: *Negative.*

This prohibition, however, affects only the first washing.

It is becoming that the second and third washing also should be done by a man in sacred orders, but it is not obligatory. Therefore, after the purificators, palls and corporals have been washed once by a person in sacred orders, there is no prohibition against handing them over to the sisters or other religious women, who will wash them again and iron and repair them.

XX. A MARRIAGE CASE UNDER THE NEW DECREE

Titius, an assistant priest in St. Bartholomew's parish, is aroused from sleep in the middle of the night and called to the neighboring parish of St. Thaddeus to administer the last Sacraments to one of his parishioners, named Cajus, who is taken suddenly very ill while visiting there in the house of Sempronia, a woman to whom he was never married, but by whom he has several children. Titius recalls, on the way thither, that Cajus is engaged to be married to Tiberia, Sempronia's sister, which engagement is in writing and signed by Titius himself as well as by Cajus, but not by Tiberia, because she can not write. Now Titius has been warned quite severely by the pastor of St. Thaddeus against trespassing on his parish to administer the Sacraments or perform any other sacerdotal ministry. On the other hand, Titius has received authorization from the assistant priest of St. Thaddeus, who is a particular friend of his, to administer any of the Sacraments within the parish limits whenever he might desire to do so. Taking note of these things, and not wishing to disturb his friend, the assistant priest of St. Thaddeus, Titius resolves to marry Cajus and Sempronia without more ado. He makes two small boys, one ten and the other seven years old, act as witnesses. They are half asleep and grumbling because their sleep has been disturbed. Omitting the interrogations and the prayers, as found in the ritual, Titius marries the pair without any ceremony, simply having them express mutually their consent to the marriage. Returning home, Titius retains the fee for the marriage which Cajus gave him, and records the marriage on the books of St. Bartholomew's parish, but neglects to make any

entry in the baptism records. All this happened since Easter Sunday, April 19, 1908, on which day the new marriage law, *"Ne temere,"* of Pope Pius X, went into effect.

Unde quaeritur: An Titius egerit temere?

Answer.—"Nearly thirty years ago, 1880, Leo XIII, of blessed memory, acclaimed to the world the famous encyclical 'Arcanum,' which contains a most lucid and comprehensive exposition of the fundamental principles of Christian marriage; and Pius X, through the Sacred Congregation of the Council, in order to make most practical these principles at the present hour, issued the decree 'Ne temere,' which (1) changes the discipline of the Church with regard to 'sponsalia' (betrothal); (2) modifies the 'Tametsi' decree of the Council of Trent affecting clandestine nuptials: (3) provides for a more perfect registration of marriage." (Pastoral of the Archbishop of New York on the new marriage law.)

The above case falls under this new law of Pius X, and in order to treat it clearly and orderly, we shall consider:

1. The *sponsalia* contracted by Cajus and Tiberia.

2. The validity of the marriage between Cajus and Sempronia, as performed by Titius.

3. The *lawfulness* of the said marriage.

4. Titius' conduct in retaining the marriage fee and entering the marriage on the records of St. Bartholomew's church.

I. The *sponsalia* contracted by Cajus and Tiberia. Since the Council of Trent, *vera sponsalia, i. e.*, a true betrothal or marriage engagement, produced the following results: First, it created a diriment impediment *publicae honestatis,* to the subsequent marriage of either party to the betrothal, with a blood-relative in the first degree, of the other; that is to say, a man can not marry either the mother, sister or daughter of the woman with whom he has con-

tracted *vera sponsalia,* nor can the woman marry validly either the father, brother or son of the man to whom she is betrothed.

Secondly, *vera sponsalia* create an *obstructive* or *prohibitive impediment* to the marriage of either party to them with any other person whatsoever. Now the new marriage law does not affect these consequences of *vera sponsalia* at all. They remain under the new law just what they have been since the Council of Trent. But the new law does affect the *sponsalia* themselves, restricting them to a *written* betrothal in the presence of witnesses and signed by the principals and the witnesses. Heretofore any kind of betrothal, verbal or written, with or without witnesses, provided only that it was a real and true promise of marriage, induced the above impediments. Henceforth a betrothal, in order to create the above impediments, must be:

1. A *written* contract, signed by the parties to the contract; and if either, or both, can not write, the name (X) mark must be placed on the contract, indicating the illiteracy.

2. The signature of *one* witness is sufficient if the witness be the ordinary of the place, or the parish priest; but if either or both the parties to the contract can not write, an additional witness, who can write, is required to attach signature.

3. The signature of *two* witnesses is essential if the ordinary of the place or the parish priest does not sign; these two witnesses need not be ecclesiastics; they may be laymen; in case either or both parties to the contract can not write, *three* witnesses are required, who will attach their signatures.

These things being so, the written betrothal that existed between Cajus and Tiberia was not a true betrothal within the meaning of the new marriage law; first, because it did not bear even the name mark of Tiberia, who could not write; and, secondly, because it

lacked the signature of an extra witness, who should have signed it, together with the priest, since Tiberia did not know how to write.

Therefore, this written agreement to marry did not place any obstacle in the way of Cajus' marriage to Sempronia, or to any one else.

II. As regards the *validity* of the marriage of Cajus and Sempronia, it must be borne in mind that a marriage, in order to be *valid* according to the new legislation, must be:

1. Contracted before the ordinary or the parish priest (or a priest duly delegated), provided the ordinary or the parish priest has jurisdiction over the *place* where the marriage is performed.

2. Contracted in the presence of *two* witnesses besides the officiating priest.

3. Contracted in the presence of a priest having jurisdiction, who assists of his own free will and without compulsion, and asks and receives the consent of the contracting parties.

The question now arises, Is the *assistant* priest of a parish to be considered a *parochus* in respect of marriage. Yes; in missions all priests appointed to the universal cure of souls in any station come within the meaning of the term *parochus*. Fr. Noldin says: *Nomine parochi intelligitur qui proprio nomine curam animarum actu exercet, etsi cura habitualis sit apud alium, v. g., capitulum, vel parochiae nondum sint canonice erectae* (Mat. n. 646).

As regards the archdiocese of New York, the Archbishop has ordained:

"Every priest of this diocese (New York) having faculties can *validly* assist at marriage, *within the limits of his own parish,* and can marry *validly,* within the limits of his own parish, not only his own parishioners, but also people from other parishes and other dioceses, provided there be no diriment impediment. A marriage

performed by a priest (without being duly delegated) outside the limits of his own parish is null and void."

It is to be noted, continues the letter of the Archbishop of New York, first of all that it is not our intention to reserve to the pastors *sole* jurisdiction over marriage in their respective parishes. Every assistant priest, appointed to parochial work, is to exercise *validly,* in the parish to which he has been assigned, authority over marriage, similar to that invested in the pastor, except where, by special delegation, the pastor may receive extraordinary faculties for particular cases or circumstances. The assistant priests, however, will bear in mind that it is not becoming for them to grant authority *to priests of other dioceses* to perform the marriage ceremony in this diocese or to give permission to the faithful to marry outside their own parish or the diocese; these matters should be left to the pastors. The consent of the pastor is necessary that the assistant may, on any occasion, officiate *licitly* at marriage in the parish.

It is evident from this that in the archdiocese of New York the assistant priests have the same jurisdiction over marriage in respect of its *validity* as the pastors. And this will undoubtedly be the practise in all the dioceses, because it secures the validity of the marriage contract, without derogating from the orderly control of the pastors of parishes over the marriages contracted in their parishes. When, therefore, the assistant priest of St. Thaddeus' parish granted authority to Titius to officiate at marriages within the limits of St. Thaddeus parish, the authorization was *valid,* although *illicit,* as against the will of the pastor of St. Thaddeus, and Titius could therefore assist *validly* at the marriage of Cajus and Sempronia. The papal decree says:

"vi. The parish priest (and, therefore, the assistant priest, in New York diocese, at least) and the ordinary of the place may grant

permission to another priest, *specified* and *certain,* to assist at marriages within the limits of their districts."

But apart from this, Titius was authorized to marry Cajus and Sempronia *validly* and *licitly* because Cajus was dangerously ill, and a marriage was necessary for the relief of conscience and for the legitimation of the offspring. To quote again the words of the decree:

"vii. When danger of death is imminent, and where the parish priest or the ordinary of the place, or a priest delegated by either of these, can not be had, in order to provide for the relief of conscience, and should the case require it, for the legitimation of offspring, marriage may be contracted, validly and licitly, before any priest and two witnesses."

Titius assisted *validly,* therefore, and licitly at the marriage of Cajus and Sempronia. The assistant priests of New York diocese are admonished that it is *not becoming* for them to grant authority to priests of *other dioceses* to perform the marriage ceremony in this diocese, as that belongs to the pastors. If, however, they do grant such authorization, without the pastor's leave, it is quite valid. Nor is it *licit* for the assistant priest to officiate on any occasion at marriage in the parish without the pastor's consent.

III. The authorization, therefore, which Titius received from his friend, the assistant priest of St. Thaddeus, was valid, but illicit, as against the will of the pastor, and if Cajus had not been dangerously ill and a marriage necessary without delay, Titius would have committed sin in marrying Cajus and Sempronia. Under the circumstances, however, Cajus' illness rendered the marriage ceremony as performed by Titius both valid and licit.

IV. The two small boys who were pressed into service as witnesses were competent, provided they were sufficiently aroused to

understand what was going on. The new marriage law prescribes no qualifications for the witnesses. A minor who has reached the age of discretion, or a non-Catholic, may be a witness.

N. B.—In order to be licit the marriage ceremony must be performed by the pastor *of the bride,* and not, as heretofore, by the pastor of either the bride *or* the bridegroom. In this the new discipline differs from the old. He is considered the pastor of the bride in whose parish she has actually resided for *one* month, whether her intention was to remain there *one* month or no. Even though she had not resided in the parish for one month, "a case of grave necessity excuses from the obligation of seeking permission from the pastor or ordinary of either party."

Titius, of course, must satisfy his conscience *de statu libero* of Cajus and Sempronia; that is, that they are free from every canonical impediment, and if from another diocese they must bear with them letters *de statu libero* from the competent authority. The marriage fee must be returned to the pastor of the place where the marriage is performed or to the parish priest of the contracting parties. Titius should have sent the names of Cajus and Sempronia and the witnesses to the pastor or assistant of St. Thaddeus parish, there to be entered on the marriage records. The decree says:

"ix. After the celebration of a marriage, the parish priest, or he who takes his place, is to write at once in the book of marriages the names of the couple and of the witnesses, the place and day of the celebration of the marriage, and the other details, etc., and this even when another priest, delegated by the parish priest himself or by the ordinary, has assisted at the marriage." In this latter case the delegated priest is bound, conjointly with the contracting parties, to provide that the marriage is inscribed as soon as possible in the prescribed books.

It is also required by the new legislation that the marriage of Cajus and Sempronia be inscribed in the book of baptisms, opposite the record of their baptisms, and if they have been "baptized elsewhere, the parish priest who has assisted at the marriage is to transmit, either directly or through the episcopal curia, the announcement of the marriage that has taken place, to the parish priest of the place where the person was baptized, in order that the marriage may be inscribed in the book of baptisms.

"x. Parish priests who violate the rules thus far laid down are to be punished by their ordinaries, according to the nature and gravity of their transgression." (Decree of the Congregation of the Council on marriage, August 2, 1907.)

XXI. A CASE OF RESTITUTION

Mary is a servant employed in the home of Mr. Smith. From time to time she is commissioned by her employer to purchase certain things for his home. He orders her to purchase them at a particular business house that he names, and fixes the price that she is to pay for them. Mary, however, purchases them at another business house, where she gets them cheaper, and she keeps the difference for herself. She justifies herself by saying that the difference in price represents the fruit of her own industry, and, therefore, belongs rightfully to her. Moreover, she claims that she is underpaid by her employer, and that this difference in price makes up the shortage in her wages. Is Mary bound to make restitution, either to the business house from whom she failed to make the purchases, or to her employer?

1. Mary is not obliged to make any restitution to the firm from whom she failed to purchase the goods. The reason why she is not so bound is because she did not sin against the virtue of *commutative justice* in not buying the goods from that firm, and only *commutative justice* imposes an obligation of making restitution. It is assumed, of course, that there were no other indirect considerations or circumstances which might bring the case under the virtue of strict justice. For, although, after a fashion, it might seem that Mary did an injustice to the firm from whom she failed to make the purchases when she had been ordered to do so by her employer, in defrauding them of a just profit that they might have realized on the sales, nevertheless, strictly speaking, Mary did not do them any real injury, since they had no strict *right* to such profit, either real or personal. Neither can it be maintained that the firm had at least a right *ad rem* to the profit that they would have real-

ized from the sale of the goods, since that profit was intended for them by Mary's employer, who ordered her to purchase the goods from this particular firm. Because Mr. Smith ordered his servant Mary to purchase certain goods, at a fixed price, from a particular firm, it does not follow that Mr. Smith intended to convey to that firm a strict right to the profit resulting from such purchase and sale. All that follows from orders such as Mary received, is that the employer desires to be furnished goods to his liking, with the guarantee that a particular business house furnishes, and if he intends the profit to go to that particular house, still he does not, under ordinary circumstances, make a conveyance of strict right to such profits to that particular firm. We say, *under ordinary circumstances,* because there may be cases in which, owing to peculiar circumstances, the employer might desire to convey to some particular business house a strict right to the profits of such sales, as, for instance, if Mr. Smith should enter into a contract with a particular business house to purchase a certain line of goods from them, uniformly, in consideration of which agreement, the firm contracts to furnish the goods at a uniform price, irrespective of market prices at any particular time prevailing. In this case, of course, the firm would have a *strict right* to make the sales and to realize the profit, and Mary dare not substitute another firm without incurring an obligation of restitution, since she does a real injury to the firm that holds the contract with Mr. Smith, violating their strict rights. But apart from particular cases, and under ordinary circumstances, an order such as Mary received from Mr. Smith implies no conveyance of strict right to profits to any particular business house, and, therefore, the transgression of such an order does not induce an obligation of restitution.

2. But Mary's case stands quite different, if we view it in relation

to her employer, Mr. Smith. Mary is bound to restore the difference in price to Mr. Smith, even though the goods that she purchased elsewhere for less money are equally as good as what she would have obtained at the firm designated by Mr. Smith. The reason is that Mary has no claim or title to the difference in price. The money that Mary received from her employer belongs to the employer until it is spent. The employer, in handing over to Mary a certain sum of money with which to buy goods, does not relinquish to Mary his ownership of the money, but simply makes Mary his agent and entrusts to her his property, in as far as the same is necessary for the purchase of certain goods. Mary is obliged, both by reason of her position as agent for Mr. Smith, and the salary or wages that she receives, to give her labor to Mr. Smith, and to safeguard his interests. This is the duty of agents and the profits of their industry and sagacity belong to the employer who hires them and pays them precisely for this. *"Quidquid parcit, parcit domino."* The fact that Mary would have spent all the money given her by her employer, had she bought the goods from the firm designated by Mr. Smith, without any advantage accruing to her employer, does not change the case. The money that she has over is Mr. Smith's money, and *res clamat domino.* Mr. Smith has not abdicated his right to his money, or to that part of it which is still in the hands of his servant, nor has he conveyed any rights in it to Mary. It is the same as if Mary had saved the money from Mr. Smith's house, while the same was being destroyed by fire; the saving of the money or the rescuing of property from destruction by fire, does not transfer ownership of the money or property from the owner to the rescuer. The money belongs to the original owner, in this case to Mr. Smith, and must be restored to him. The reason that Mary urges in justification of retaining the

difference in price, namely, that the difference represents the fruit of her own industry, is hardly a valid reason. In some particular case we can see how it might be, but ordinarily there is no special industry manifested in a case like this, nor is there any extraordinary sagacity or special labor required, any more than what the ordinary run of servants would quickly put in evidence if it were just and right to profit by it.

Nor is the other reason that Mary advances to justify her conduct a good and valid reason, namely, that she is underpaid and the profit that she makes on her purchases makes up the balance of the wages that she thinks are due her. She contracted with Mr. Smith of her own free will to work for a certain wage, and she can not of her own authority increase her pay. She must keep the contract. If secret compensation were allowed to servants in cases like Mary's, the door would be opened to all kinds of stealing. Innocent XI was assuredly right when he condemned the following proposition: "Servants and domestics are allowed to take secretly from their employers enough to compensate them for their work if the same exceeds the salary they receive."

"Famuli et famulae domesticae possunt occulte heris suis surripere ad compensandam operam, quam majorem judicant salario quod recipiunt" (Prop 57, damnata ab Inno. XI).

XXII. ABSOLVING PENITENTS WITHOUT ADMONITION

A certain confessor enjoys quite a requtation for expediting matters in the confessional. As a rule he pays no attention to the different classes of penitents who approach his confessional. He rarely asks a question; He allows the penitent to tell his sins without interruption, and then if he thinks him at all disposed, he absolves him immediately, without any word of instruction or admonition. On the vigils of great feasts, when the number of penitents is very great, he does not permit his penitents to make a full confession, but when they have told one or the other sin, he admonishes them to tell the rest of their sins in their next confession, and then absolves and dismisses them. He maintains that he is justified in acting thus, because otherwise he would never be able to hear all the people who come to him. To instruct or to admonish penitents in the confessional is not an essential part of the Sacrament of Penance, he says, nor is the confessor strictly bound to interrogate the penitent, provided the penitent confesses *materiam sufficientem.* What must be thought of his method of action?

Answer.—The practise of this confessor is certainly blameworthy, because he is neglecting certain strict obligations that are binding on the confessor's conscience.

First, as regards the practise of dismissing all penitents indiscriminately, without admonition or instruction. Benedict XIV, in his encyclical letter, *Apostolica Constitutio,* of July 26, 1749, issued for the jubilee of the following year, admonishes all confessors that they do not discharge the obligations of their office, but, on the contrary, that they are guilty of mortal sin, if, while sitting in the sacred tribunal of Penance, they show no solicitude for their peni-

tents, but, without admonition or instruction, absolve them immediately they have finished the recital of their sins. The words of the Encyclical are as follows:

Ut meminerint suscepti muneris partes non implere, imo vero gravioris criminis reos esse eos omnes, qui cum in sacro Poenitentiae tribunali resident, poenitentes audiunt, non monent, non interrogant, sed expleta criminum enumeratione, absolutionis formam illico proferunt.

Every priest who exercises the ministry of the Sacrament of Penance is, according to the uniform teaching of the theologians, a *teacher,* a *physician* and a *judge.* As a teacher he is bound to instruct the penitent concerning the things that are, *hic et nunc,* required for the worthy reception of the Sacrament, as well as in the things he ought to know, in order to be able to lead a Christian life. As a physician of souls, he is required to investigate the causes of the spiritual illness of his penitents, that is to say, the nature and causes of their sins, in order to apply suitable spiritual remedies in each and every case. And, finally, as every judge is obliged to hear and to study the whole case of the culprit before him, to consider its various phases and to weigh justly all extenuating or aggravating circumstances before he renders a final judgment; so likewise does the office of the confessor require of him, as a judge in the court of conscience, that he study the state of the penitent's conscience, and consider his dispositions and judge of his firm purpose of amendment, and then only to give or deny him absolution. Now it is evident that the confessor mentioned in this case does not and can not fulfil this threefold duty of teacher, physician and judge. His purpose is not to instruct and to heal and to judge; his purpose is to hear and to absolve as many penitents as possible. It stands to reason, of course, that where the number of those desiring to con-

fess is very great, and they are for the most part pious souls, who are accustomed to approach the sacred tribunal of Penance frequently and have at the most only venial sins to confess, and the confessor knows that they are sufficiently instructed concerning the Sacrament of Penance, and rightly disposed, it stands to reason, I say, that the confessor may dispatch his work expeditiously, because such penitents do not need the spiritual care and help of the confessor in order to receive the Sacrament of Penance worthily and with profit. But to proceed in the same manner with all penitents indiscriminately, whether they be known or unknown to the confessor, even with the ignorant and the poorly instructed, whether they confess mortal sins or venial sins, is certainly not to administer the Sacrament of Penance as we are bound by grave obligations to administer it. For experience proves that there are those who approach this holy tribunal unprepared, who have not sufficiently examined their conscience, who through false shame hesitate to confess certain sins, who are lacking in true contrition, though believing themselves contrite, because they have repeated orally the act of contrition. Now the prudent and careful confessor, whose earnest desire is to fulfil this holy ministry validly and licitly, with fruit and with profit, as the Church ordains that it shall be fulfilled, will endeavor to discover and correct the faults and defects and shortcomings of his penitents, by prudently questioning and instructing and disposing them, lest their confession be fruitless or even sacrilegious. If the penitent confess mortal sins, he ought to be admonished of their heineousness, in order that he may be moved to realize his spiritual condition and abhor his sins and take the necessary means of shunning them in the future. If such penitents be absolved and dismissed incontinently from the sacred tribunal without a word of admonition or advice, they will very likely consider

their sins of little consequence and never come to a realization of the necessity of correcting them, and thus will they speedily fall into them again.

Every confessor who has had experience of souls in the tribunal of Penance appreciates the gravity of this danger. For this very reason the Roman Ritual admonishes confessors to be careful to instruct their penitents regarding the condition of their souls, endeavoring to make them realize the number and gravity of their sins and to dispose them to contrition and a firm purpose of amendment.

"Demum, audita confessione, perpendens peccatorum, quae ille admisit, magnitudinem et multitudinem, pro eorum gravitate, ac penitentis conditione, opportune correptiones ac monitiones, prout opus esse viderit, paterna charitate adhibebit et ad dolorem et contritionem efficacibus verbis adducere conabitur, atque ad vitam emendandam ac melius instituendam inducet, remediaque peccatorum tradet."

The great number of penitents waiting to be heard does not excuse the confessor from the obligation of admonishing, correcting and disposing them, so that the reception of the Sacrament of Penance may be of benefit to them. St. Francis Xavier was accustomed to say that it was better to hear a few confessions, and to hear them well, than to hear a great many and to only half hear them. And St. Alfonsus says that it matters little whether there be others waiting to confess or whether some will be obliged to depart without being heard; for on the day of judgment the confessor will have to render an account of those he actually heard, and not of the others.

"Parum refert, quod alii expectant aut inconfessi discedant; confessarius enim de hoc tantum, qui sibi nunc confitetur, non vero de

aliis, in die judicii rationem reddere debet" (*Praxis confess. n.* 7).

Again it is quite blameworthy that the confessor, on the eves of great festivals, when the number of confessions is very great, should permit the penitent to confess only one or two sins and then absolve him, with the admonition to confess his other sins in his next confession. It is expressly stated in all moral theologies that the number of penitents desiring to be heard in confession can never be a valid or just reason for making only a partial confession, even though many must depart unheard and unshriven. Under all such circumstances a full and *integral* confession of all mortal sins is required of the penitent, *sub gravi.* The practise of absolving penitents without permitting them to confess all their mortal sins, because otherwise many must depart without absolution, is expressly condemned by Pope Innocent XI, in the 59th proscribed proposition.

"Licet sacramentaliter absolvere, dimidiate tantum confessos, ratione magni concursus penitentium, qualis v. g. potest contingere in die magnae alicujus festivitatis vel indulgentiae."

The reason why this proposition was condemned, says Billuart, is that the harm done by sending some penitents away unheard is not so great, as to justify a *partial* confession, especially when there is danger of absolving the unworthy, by reason of the precipitation with which the confessions are heard and the omission of a part of one's sins.

XXIII. CONCERNING THE EXCOMMUNICATION INCURRED BY THOSE WHO INJURE THE RULERS OF THE CHURCH EITHER IN BODY, IN THEIR LIBERTY, OR, IN THEIR DIGNITY

Sempronius, an excommunicated (*vitandus*) citizen, died and was buried in consecrated ground. The bishop, hearing of this, caused the body to be exhumed and reinterred in a non-consecrated cemetery. This angered the mayor of the town, who commanded that the bishop and his vicar-general (who was a bishop *in partibus*) should be expelled from the town.

Titius, a friend of the mayor and at the same time hostile to the bishop, left no stone unturned to carry out the wishes of the mayor. So the bishop was compelled to fly from the episcopal city. The people, roused to anger by the action of the mayor, would not suffer him to depart from the diocese. Yet, fearful of the consequences if the order of the mayor was not obeyed, he retired by night to the residence of a neighboring bishop. The vicar-general took up his residence at the end of the diocese with a friend.

Now the question is, what crime is punished by excommunication in Part I, Article V, of the constitutions of the bull *Apostolicae Sedis.*

The crime which merits the aforesaid penalty is the crime of personal sacrilege committed by the contumelious treatment of the officials of the Church. In the bull *Apostolicae Sedis* there are two excommunications fulminated against all who injure ecclesiastics. The first is contained in Article V, the second in Part II, Article II, *Violentas manus,* etc. Although the two penalties were intended to punish the selfsame crime, yet there is a wide difference between them. The first was established to safeguard the person, liberty

and dignity of the hierarchy; that is of the cardinals, patriarchs, archbishops, bishops and apostolic legates. The other to protect all ecclesiastics. Again the excommunication contained in Article V is reserved to the Pope *modo speciali;* while that in Article II is reserved *simpliciter.*

Thirdly, while the first ordinance is to be interpreted strictly according to the principle *"odiosa sunt restringenda"* the second has a most broad application. Accordingly the first excommunication is not merited by other persons or by other crimes than those specifically designated by the article in question. Hence one who would kill a bishop-elect but not yet consecrated, or who would throw mud at a consecrated bishop, would not be affected by this canon. The second ordinance, on the contrary, since it contains a privilege which is not personal but applies rather to the clerical order, is designed to protect all who have received *tonsure,* even though they be excommunicated or suspended or under interdict.

From this it is evident that it may sometimes happen that one may escape the excommunication fulminated in Article V and yet by reason of his crime be affected by the excommunication attached to the violation of Article II, as, for instance, would be the case with one, who, at the instigation of the devil, would hurl some mud at his bishop.

Again it might be asked, who are affected by this excommunication? The answer is simple—all who inflict any injury on the person, or who interfere with the liberty or dignity of the tonsured cleric, in other words all who maltreat those that are protected by the two canons in question.

(a) Those who injure the person; that is those who kill or mutilate or strike such persons as are made sacred by holy tonsure. Would they be subjected to this penalty who plucked the hairs of a

bearded priest or bishop? No, for this is not mutilation in the proper sense, since the beard is not a member having a function distinct from the other parts of the body.

(b) Those who interfere with the liberty, either by seizing, incarcerating or detaining a cleric. He, however, who seizes such an one and yet immediately dismisses him has escaped the condemnation of this canon.

(c) All who with hostile intention pursue or exile the prelate or the cleric. So that this censure is incurred by all who pursue with such intent even though their wicked purpose is not realized. Yet it must be borne in mind that the mere pursuit, say, with intention of terrifying, is not sufficient to bring the censure of this canon. It must likewise be remembered that to prevent a bishop from entering his allotted diocese is not the same as to exile him or eject him, and hence the censure is not merited in this instance. However, it must likewise be said that the sentence of excommunication contained in Article V falls not only upon those who kill or mutilate directly, but in like manner and with equal severity upon all who command these deeds, who approve of them, or who render help by deed or counsel or reward for the fulfilment of the wicked design.

Lastly, it may be asked, did the mayor of the town and his friend Titius, who aided him, fall under the ban of this censure, as contained in Article V of the *Apostolicae Sedis?* From one point of view it might seem that they did. For, by virtue of the decree of the mayor and the hostility of Titius, the bishop was forced to leave the episcopal city. Yet, on the other hand, it must not be forgotten that the bishop left of his own free will. Had the mayor recalled his decree, even if this were done merely because of the uprising of the populace, he would certainly have avoided the

censure. Hence since the bishop departed of his own free will and was not driven out by force, and since the vicar, who was likewise a bishop but not residing in his own diocese, did not even leave the diocese, we think there is room to doubt as to the incurring of the excommunication. Because of this we are inclined to give the benefit of the doubt to the mayor and to his friend Titius and pray that God may be as merciful to them as we are.

XXIV. THE DESECRATION OF ALTARS

Anselm, a priest, having discovered that the cover of the sepulcher of the relics in the high altar of his church had been broken into two parts, the effect of a heavy blow, though it had not been removed from its place, asked his bishop to reconsecrate the altar. The bishop, however, either because he was enfeebled by age and sickness, or because he learned that the altar-slab had two very large piercings, gave to the priest a portable altar-slab of almost the same dimensions, with which Anselm was directed to replace the broken cover. When Anselm found that this was somewhat too broad and too deep he cut a little from around its borders, and so from both its surfaces diminished a little of its thickness that it might fit into the hollow of the altar.

Now the question is asked:

1. When and under what circumstances did portable altars first come into use, and how does the Latin Church differ from the Greek on this subject?

2. What conditions desecrate a fixed or movable altar, and should the fixed altar, in the above case, be considered desecrated?

3. Does the double piercing mentioned in the above case desecrate the altar?

4. Does the portable altar in the above case lose its consecration?

Answer 1.—A portable altar from its very name is one that can be carried from one place to another. It is opposed to a fixed altar, which has a determined place in a church, and is secured to the floor. The sepulcher of the relics rests upon a small stone, variously called the sacred stone, altar-stone, a carrying stone, traveling altar, portable altar, pilgrimage altar, for the reason that they are chiefly used by missionaries and those engaged in traveling and enjoy the

privilege of a portable altar. This altar should have sufficient space to hold at least the chalice and host. As to their first usage the well-known Marténe writes as follows in his "Ancient Ecclesiastical Rites," Part ii, Bk. ii, Chap. 17:

"Besides fixed altars, there are others called portable, traveling, or pilgrimage altars, the origin of which according to some goes as far back as the eighth century. Rather, they date back to the very beginning of the Church. There can be no doubt that portable altars were used before fixed altars, for the reason that in the early days of the Church there were no temples, no permanent or fixed places for the sacred mysteries, but as Eusebius says, in Bk. 7, Chap. 22, quoting the words of Dionysius of Alexandria, "Any place at all, a field, a forest, a ship, a stable, a prison, a temple, could serve as places for the sacred mysteries" and because of this fact it was necessary that portable altars be easily carried to any one place. After the persecutions ceased and wealthy princes built magnificent Basilicas, the altars, which up to this period were movable, became fixed, and as a result traveling altars became less used. A little later, because of the necessity of traveling and the scarcity of fixed and consecrated altars, traveling altars again came into use. Whence Ven. Bede says: "Daily they offer to God the sacrifice of the loving Victim, carrying with them the little cups and altars each consecrated in turn."

Altars or tables of this kind were made from marble, blockstone, porphyry, jasper, alabaster, onyx, crystal, wood, or ebony. They were rectangular in form and rested either on wooden tables or some more or less expensive foundation.

According to the present laws of the Church portable altars must be made of stone; they must contain the relics of some saint and be consecrated by a bishop.

Among the Greeks instead of traveling altars, Antimensia are used. These consist of precious linens containing the holy relics, anointed with sacred oil by the blessing of a bishop at a special Mass for that purpose.

In the Russian Orthodox Church a temple can not be consecrated unless it contains at least one of these linens.

In the Syrian Church small tables of wood may be used in place of the Antimensia, in case of necessity.

Answer 2.—Any altar, whether fixed or movable, is held to be desecrated if:

1. It become broken. Now the break in itself may be serious by reason of the size of the fracture or serious by reason of its location, even though in itself the break may by no means be considerable.

2. If the relics have been removed or even if the sepulcher has been opened.

3. If the sepulcher itself has been broken or its cover, or if it has only been removed.

4. If the altar slab has been entirely removed from the lower structure.

5. If the upper part of the altar has been injured. Therefore, because of these laws the altar in the above case has been desecrated.

Answer 3.—It is said in the above case that the altar slab had two large piercings. In this case the same conditions obtain that affect the altar by reason of a break. These conditions we have seen in the preceding question. And so I consider that the altar has been desecrated.

Answer 4.—The portable altar given to Anselm, and which was mutilated by him in his ignorance, has become desecrated according to the above laws, and therefore the priest Anselm dare not celebrate Mass on said altar.

XXV. ARE INFORMAL BETROTHALS BINDING IN CONSCIENCE?

Of the commentators who affirm this, HEINER expresses himself most clearly, and therefore his argument may here be repeated: "As every positive promise engenders under natural law an obligation, and for this reason is binding in conscience and before God, there can be hardly a doubt that even a secret promise to marry is, of its own force, binding in conscience. Although, owing to the positive law, such a secret promise to marry has no *legal* operation and can not be enforced *pro foro externo,* this fact changes nothing in the consequences which a promise of this kind begets by virtue of its existence. The law declares invalid the marriage-promise without formal betrothal, not, however, the promise with the intention to take upon one's self the obligation to enter a prospective marriage, even though this promise is by the legislator declared invalid. In conscience one party is bound to keep such a promise to the other, and to redeem his promise either by formal betrothal or by marriage."

This argument can not be regarded as proving its point. An informal marriage promise is under the natural law binding, no doubt, but so is the informal marriage. And yet the informal marriage is without doubt invalid, because "owing to the positive law such marriage has no legal operation," it contracts no matrimonial union *pro foro externo,* and begets no marriage rights nor duties whatsoever, thus depriving the contract of any value it may have by virtue of the natural law. The appeal to the natural law proves nothing therefore.

On the contrary we would conclude, and we believe correctly so:

If in consequence of the Church's legislation, governing the *forum externum* and *internum,* there ensues from the repudiation of an act, of itself valid according to the natural law, its nullity and ineffectiveness for the *forum internum,* there must result, if the Church repudiates also the *agreement* to perform this act, *a fortiori* also nullity and ineffectiveness of the agreement for the *forum internum* That the Church has exercised her authority over betrothals *pro foro interno* is known to every canonist. The bond formed by the betrothal is, in and of itself, easily dissolved, even simply by mutual consent without any particular reason. It is difficult to believe that the words of a certain ecclesiastical law, which in all its other paragraphs undoubtedly does bind in the *forum internum,* should in its first paragraph, despite its plain wording, refer merely to the *forum externum.*

One single ground might seemingly be mentioned in support of their claim, but none of the commentators refer to it. The first article says: *Ea tantum sponsalia HABENTUR valida,* while in the third article we find: *Ea tantum matrimonia valida SUNT.* However, *habentur* and *sunt* are only different terms that have here the same meaning, for alone those betrothals made under observance of the lawful form are valid, because the Church repudiates the informal ones, and deprives them of all value and force. If—and in this all commentators are unanimous, from an *informal* betrothal not even the *fides sponsalitia follows,* and therefore a transgression against the holy purity does not involve a breach of faith and a violation of justice (*iustitia commutativa*) toward the innocent party, then it is difficult to perceive how there can be an obligation in conscience.

The law says: "an informal marriage promise is not a betrothal," such an informal betrothal can not therefore be a promise with the

intention of assuming an obligation, and can not, therefore, be of value and binding in conscience. The position of the commentators who defend the obligation incurred by informal betrothal does not seem consistent. Either they must concede to an informal engagement all effects *pro foro interno,* which proceed from the natural law, therefore *fidelitas and fides* (*sponsalitia* or otherwise) with *iustitia commutativa* and invalidity of a subsequent betrothal *stante priori*—three grave obligations therefore, or they must admit that none of the effects, not even the minor obligation of *fidelitas,* result for the *forum internum.* VERMEERSCH, in his excellent commentary, supports this view.

Cardinal Gennari refers, moreover, to the introduction of the decree, where are set forth the dangers of informal betrothal, as: *primum quidem incitamenta peccandi causamque, cur inexpertae puellae decipiantur, postea dissidia ac lites inextricabiles,* and concludes with good reason that if informal betrothals were binding in conscience, all these dangers which the legislator intended to set aside would remain, and the legislator obviously can not intend this. Finally he cites from Cardinal Gasparri's work (*De Matrim.,* n. 78) a decision of the Congregation for Extraordinary Ecclesiastical Affairs. Leo XIII had ordained for so-called Latin America a certain written form for the validity of a betrothal, and to the question whether betrothals without this written form were in those countries binding, at least in conscience, the Congregation, on January 5, 1902, handed down the answer, confirmed by the Pope: *Praedicta sponsalia pro neutro foro valere.*

No confessor has therefore the right to construe any obligation whatsoever from an informal betrothal. If a liability is incurred by one who has entered an informal betrothal, it can not originate from the betrothal (there is no betrothal), but only from some other inci-

dental aspect of the act, for instance the informal betrothal may have been a means to deceive, or to lead into sin.

For this reason it is important to draw the attention of the people to the fact that those who are not willing to make the formal declaration of betrothal are open to suspicion that they have no earnest, no honorable intention. The faithful should be enlightened, likewise, that formal betrothals are not valid if there is an impediment (except the one of forbidden times) and such betrothals become valid only upon the removal of the impediment. For that which a person can not do *valide* or *licite,* he can not either validly promise to do.

XXVI. DELEGATION IN ASSISTING AT BETROTHALS

Can the parish priest * or the bishop delegate another priest (his curate for instance) to assist at a betrothal, or can they have themselves delegated in another parish by the parish priest there? KNECHT and HEINER affirm this with considerable certainty, and KNECHT applies to this the rule: *Plus semper in se continet quod est minus,* and, *Cui licet quod est plus, licet utique quod est minus.* The law, however, speaks of delegation only in cases of marriage, not of betrothal, and there explicitly circumscribes this faculty, therefore all other commentators declare against delegation at betrothals, and so has the *S. C. C.* decided, March 28, 1908. *Pro praxi* no special difficulty is thereby offered. If he is not parish priest of the place where the betrothal is made the priest requested to assist may simply secure another witness to the act; then the betrothal at all events is valid *ceteris paribus.*

Is there a law or precept that betrothal *must* precede the marriage? To this question we must evidently say no. But if two persons wish to become betrothed, they *must* observe the prescribed form. Otherwise a betrothal does not take place, and he who knowingly and by omission of the prescribed form merely pretends to become betrothed, commits a deception toward the other party and is answerable *in foro externo* and *interno* for the consequences of the deception.

* According to decisions of the S. C. C. the term *parish priest*, in the sense of the decree *Ne temere*, does not only refer to pastors in canonically erected parishes, but it means, where parishes have not been canonically erected, all priests lawfully appointed to exercise the pastorate for fixed districts; the term includes, furthermore, chaplains in Army and Navy, within the boundaries of their lawful appointment; furthermore, administrators and coadjutors who, for incapacitated pastors, take full charge of parishes; of spiritual directors of hospitals and other institutions, only those who are not subject to a parish priest; and, in missionary territories, every priest entrusted by his lawful superior with the charge of a station or district.

XXVII. "NE TEMERE" AND CATHOLICS OF THE ORIENTAL RITE

In interpreting the new decree *Ne temere* there has prevailed a diversity of opinion as to whether the new decree binds only the Catholics of the Latin rite, or also those of the Oriental rite. On February 1, 1908, the *Cong. S. Concilii* has decided that the new decree is binding only for Catholics of the Latin rite; in regard to Catholics of other rites their former ecclesiastical law continues in force (*Acta S. Sedis,* 1908, p. 82 *et sequ*).

The editor of the *Acta S. Sedis* comments anent the new decision that Latins living among adherents to the Oriental rite must not on that account consider themselves exempt from the decree *Ne temere.* The *S. Cong. de Propag. Fide* is considering the advisability of extending the new decree to the non-Latin rites.

XXVIII. MARRIAGES BETWEEN LATIN AND ORIENTAL CATHOLICS, OR OF CATHOLICS WITH SCHISMATICS (PROTESTANTS)*

In districts of mixed religions the following marriage cases may occur:

1. One party is Latin Catholic, the other Oriental Catholic.

The marriage may validly take place either according to the decree *Ne temere* or according to the law to which the Oriental Catholic is subject, because the marriage contract is indivisible and for the Oriental party applies his or her Church law. This is the opinion of the Roman Consultor in *Acta S. Sedis,* 1908, p. 83.

2. One party is an Oriental Catholic, the other a schismatic (Protestant).

Neither party is bound by the new decree *Ne temere.* The Oriental Catholic is exempted by reason of the decision of the *S. C. Concilii* of February 1, 1908†; the schismatic (Protestant) is as such not bound on account of Num. XI, paragraph 3, of the decree (Schismatics and Protestants are only involved when marrying a Latin Catholic; Par. 2, Num. XI, of the decree, in conjunction with the decision of the *S. C. Concilii,* Feb. 1, 1908). Because of the indivisibility of the contract an Oriental Catholic may be validly married to a schismatic (Protestant) either according to the Oriental Catholic, or according to the schismatic (Protestant) Church. This follows from the views of the Roman Consultor in *Acta S. Sedis,* 1908, page 83.

3. One of the parties is a Latin Catholic, the other a schismatic (Protestant).

* See page 137. † See page 129.

The marriage, by force of Num. XI, Par. 2, of the decree *Ne temere* can only be validly performed by a (any) Catholic pastor. This is the opinion of the Roman Consultor in *Acta S. Sedis,* 1908, p. 85.

XXIX. PRACTICAL MARRIAGE CASES UNDER THE NEW DECREE

1. A couple resides in Parish A and desires to be married in this parish.

The marriage, in the same manner as heretofore, is announced in Parish A and the couple are married by the parish priest* of A or by his delegated assistant. The parish priest, furthermore, may delegate any other priest to perform the ceremony at A. In this normal case, and the most frequent, no change has taken place from former usage.

2. The man lives in Parish A, the bride in Parish B, they wish to be married in Parish A.

The banns are published in A and B, as formerly. The parish priest of A may validly and without delegation by the parish priest of B perform the ceremony, but according to the new law the ceremony should properly take place in the parish of the bride. If a *justa causa* to marry in Parish A prevails, the parish priest of A needs no permission by the parish priest of B to make the marriage proper in A. If no *justa causa* is present the parish priest of A must seek the permission of the parish priest of B. The parish priest of A can then delegate any other priest to perform the ceremony at A.

Should the couple desire to be married in A by the parish priest of B, then, in accordance with the new law, the parish priest of B must have himself delegated by the parish priest of A, because otherwise he can not perform the ceremony validly outside his parish of B.

3. The man lives in Parish A, the bride in Parish B, they desire to have the ceremony performed in C.

* The scope of the term *parish priest* is defined on page 128.

The banns are published in A and B as heretofore. The parish priest of C, according to the new ecclesiastical law, requires no delegation for the *valid* performance of the ceremony. In order that he may perform the ceremony *licitly* he must have delegation, which he may seek from either the parish priest of A, or from the parish priest of B.

If the parish priest of A (the bridegroom's parish priest) wishes to perform the ceremony in C, then, in accordance with the new law, he would have to be delegated for that purpose by the parish priest of C, in order that the marriage should be *valid.* He requires no sanction to make the action licit because he is *parochus proprius* of one of the contracting parties. Of course it is proper to have an understanding with the *Rector ecclesiae* in whose church one wishes to perform a liturgical function; in our case, therefore, the parish priest of A should communicate with the parish priest of C. In my opinion the parish priest of A does not need delegation by the bride's parish priest for the reason that in Num. V, Par. 3, of the decree there is only prescribed *licentia alterutrius contrahentis;* nevertheless it may be claimed in interpretation of this point that the permission of the bride's parish priest also is requisite in a locality in which neither of the contracting parties is resident. If this opinion be held then this permission also must be procured by the parish priest of C, if they marry in C.

4. A couple had domicile in Parish A, but left A and settled in Parish B, where, three weeks after, they wish to be married.

In this case, as in all cases of newcomers, the parish priest's (of B) first question must be "How long do you intend to stay in B?" He asks for the *animus manendi,* in order that he may determine whether the parties have in B a domicile, a quasi-domicile, or neither, and in the last case are *vagi.* The results may be as follows:

(a) The couple reply: "We intend to stay permanently in B." In this case these people have at once acquired a *domicilium verum.* In accordance with the *jus commune ecclesiae* the banns are then published only in B. The parish priest of B may validly and licitly perform the ceremony; he requires no delegation or permission by the parish priest of A because he is now *parochus proprius.*

(b) The couple reply: "We wish to be married here, and then as soon as possible remove to C." In this case there is no *animus manendi perpetuo,* therefore no actual domicile. The couple have not even a *quasi domicilium,* because they do not intend to remain six months at least (*per majorem anni partem*). Hence these parties are to be viewed as *vagi* and report is to be made to the Ordinary of the diocese.

5. Man and woman reside in Parish A, they wish to be married in Parish B.

According to the new law the parish priest of B requires no delegation by the parish priest of A in order to perform the marriage ceremony *validly,* but he does require *permission* from the parish priest of A.

6. They reside in Parish A, they wish to be married by the parish priest of B in Parish C.

The parish priest of B, according to the new law, must be delegated by the parish priest of C to render the marriage *valid.* Furthermore the permission of the parish priest of A must be secured.

7. The contracting parties live in Parish A, they wish to be married by the parish priest of B in Parish A. The parish priest of A has delegated the parish priest of B, with authority to sub-delegate, and departs on a journey. Meantime the couple have changed their mind and wish to be married in Parish C by the parish priest of C.

In order that the marriage should be *valid* in accordance with the

new law, the parish priest of C requires no delegation; he should, however, for the *licit* performance of the ceremony, secure the permission of the parish priest of A, but as he is away from home, and has demonstrated by delegating the parish priest of B that he has no objection, the parish priest of C may perform the marriage ceremony licitly by reason of this permission. A sub-delegation of the parish priest of C by the parish priest of B is not necessary.

8. Bride and groom reside in Parish A, they desire to be married in the chapel at B, the ceremony to be performed by a related priest who is professor of theology at the seminary in A.

In accordance with the new decree, the professor, in order to perform the marriage ceremony validly in B, must be delegated by the parish priest of B; in order that the ceremony may also be *licit,* permission of the parish priest of A must be secured either by the professor or by the parish priest of B.

9. The contracting parties reside in Parish A and wish to be married there, the parish priest of B is to perform the ceremony (in A). The parish priest of B is accordingly delegated by the parish priest of A. The couple, however, change their plans, and are married without further ado in B by the parish priest of B.

The marriage is valid according to ecclesiastical law, no matter what interpretation may be correct as to territorial restrictions of the delegation, because the parish priest of B functions validly without delegation as parish priest of the place. He should, however, have applied for the permission of the parish priest of A. It does not follow because he had been delegated for A that the *parochus proprius* was agreeable to the marriage in B. In this case the *parochus proprius* was not away from home.

10. A couple reside in parish A, they wish to be married in B. The parties being befriended with the parish priest of C wish to be

married by him in B, provided he does not have to start on a certain journey before the marriage. In that case they would like to be married by the parish priest of B, in B. Corresponding to the new law the parish priest of C must be delegated by the parish priest of B in order that the marriage be valid. If he leaves before the wedding day and the parish priest of B takes his place, the latter requires no delegation for the *validity* of the marriage because he is the parish priest of the place. In either case the permission of the parish priest of A must be obtained.

11. The parish priest of A has no curate. A marriage is approaching when he is called away from home. In the neighboring Parish B there are parish priest and curate. The parish priest of A delegates the *parish clergy* of B *cum jure subdelegandi* and departs. Soon after the curate of B is assigned to another post, and another priest takes his place in B. Upon the arrival of the new curate in B the marriage is due to take place in A.

In accordance with the new law the parish priest of B, by reason of the delegation, can validly perform the ceremony in A. But what about the new curate? At the time of the delegation he was not yet a member of the *parish clergy* of B, therefore a *persona incerta.* In my opinion the new curate must be subdelegated by the parish priest of B in order to perform the ceremony validly in A.

Hence in places where many strangers congregate, and where delegations are frequent, the date of the delegation is to be closely considered if a change of the clergy has taken place.

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XXX. MIXED MARRIAGES UNDER THE NEW DECREE*

In discussing mixed marriages the law that prevailed before August 2, 1907, must be considered, because if a conversion of one or both parties has taken place *after* the marriage, the validity of the union is to be judged in accordance with the old law if the marriage took place before Easter, 1908.

Those non-Catholics who, according to the decree *Ne temere,* do not need the Catholic form for the *validity* of their marriage, do not even seem to require it for its *lawfulness,* because it is said in Num. XI, Par. 3, of the decree: *Nullibi ligantur ad Catholicam matrimonii formam.* If in the following discussion briefly the presence of the Catholic parish priest is demanded, let it be understood that there must be also at least two witnesses present.

(a) *Catholics and Protestants* (schismatics).

Under mixed marriages, in the actual and usual meaning, are understood unions between Catholics and Protestants (schismatics). If no impediment prevails and the lawful form was observed, such marriage without dispensation is valid, but unlawful. In regard to the question whether the Tridentine form (Catholic parish priest and two witnesses) was required for valid marriage, there had to be distinguished (before the *Ne temere*) two cases:

(aa) In Tridentine territory mixed marriages without Catholic parish priest and witnesses were invalid.

(bb) For certain countries, either disputed territory or difficulties prevailing, papal decrees had created special conditions; so, for instance, for Hungary and Germany.

(cc) In territories where *Tametsi* had not been promulgated, or

* See also page 130.

was not in force, marriages between Catholics and Protestants (schismatics) were valid, but unlawful.

After the decree *Ne temere* the distinction between Tridentine and non-Tridentine territory disappears. The law is now: Marriages between Catholics and Protestants (schismatics), in order to be valid, must be contracted before a (any) Catholic parish priest (or Bishop) and at least two witnesses. Such marriages are still valid without this prescribed form in a territory for which the Apostolic See has decreed special laws. Hence, for instance, the special law referred to remains in force for Germany notwithstanding the new law, Num. XI, Par. 2, of the decree of August 2, 1907.

In accordance with the *jus commune ecclesiae,* the proper form of assisting at mixed marriages by a Catholic parish priest was passive assistance, even when dispensation has been obtained. This *passive* assistance has received by the new decree an important moderation, which makes requisite for the validity of the marriage the *requirere* of the consent (Num. IV, Par. 3, of the decree). Hence in my opinion the passive assistance will hereafter merely mean omission of the ceremonies, avoidance of the *locus sacer* and of ecclesiastical vestments.

(b) *Catholics and Apostates.*

Apostasy is the complete abandonment of the Christian faith, whether or not there is joined to it the embracing of Judaism, paganism or any other form of cult; he also is an apostate who, after falling away from Christianity, joins no other community, but, without following any particular religion, lives as Deist, Atheist, Pantheist, or Free Thinker (Aichner, *Compend. Jur. Eccles.,* 1890, p. 774). At all events an apostate can be only one who has been validly baptized as Catholic, Protestant, or schismatic Christian. By the word apostate is usually understood only one who was a Catho-

lic; but the term would likewise hold good in the case of one who left another Christian community. It is erroneous to use the word apostate in the instance of a Catholic who embraces Protestantism; the correct term in such a case is heretic.

Marriages between Catholics and apostates were under the old Church law dealt with the same as those between Catholics and Protestants. The new decree makes distinction between apostates who before their apostasy were Catholics, and those who previously were Protestants (schismatics). The marriage between a Catholic and an apostate from Catholicism, in order to be valid, must, in every case and everywhere, be performed before a Catholic parish priest; the form of this marriage is in regard to its *validity* subject to the same requirements as marriages among Catholics (Num. XI, Par. 1, of the decree); dispensation is necessary for its *lawfulness.*

On the other hand a marriage between a Catholic and an apostate from Protestantism is governed by the rules for mixed marriages, hence in places where such provision has been made by special laws of the Church, it can be validly contracted even without a Catholic parish priest (Num. XI, Par. 2, of the decree).

A person originally heretic or schismatic, then converted to the Catholic religion, and finally turned apostate, is to be treated like an apostate from Catholicism, hence his or her marriage with a Catholic is to be dealt with the same as a marriage between Catholics (Num. XI, Par. 1, of the decree). Dispensation is referred to above.

(c) *Protestants and Apostates.*

Inquiry into the validity of marriage between Protestants and apostates will be in order for the Catholic priest if one, or both, parties, after the marriage, join the Catholic Church. We omit here to take into account the question of validity of a Protestant baptism.

Marriages between Protestants and apostates were, under former

rules, treated the same as marriages between heretics (Protestants). The decree *Ne temere* makes, here again, the distinction between apostates from Catholicism and such from Protestantism (schism). A marriage between a Protestant and an apostate from Catholicism is regarded similar to a mixed marriage between Catholics and Protestants and to be valid must therefore be performed before a Catholic parish priest (except in exempted territories) (Num. XI, Par. 2, of the decree). The marriage of a Protestant with an apostate from Protestantism is valid everywhere without regard to the presence of a Catholic parish priest (Num. XI, Par. 3, of the decree).

(d) *Catholics and Jews.*

A marriage between Catholic and Jew does not come, according to Canon Law, under the head of a mixed marriage in its technical sense, but is classed as a marriage between baptized and unbaptized. Without a dispensation not only would such a union be *unlawful,* but even *invalid,* on account of the impediment *disparitatis cultus.*

Before the decree *Ne temere* it was a mooted point whether or not the Tridentine form was requisite for the marriage between Catholic and Jew. Many canonists held that, as the Jew was not bound by the laws of the Tridentine Council, his or her exemption would be shared by the Catholic party to the marriage, and therefore such marriage would be valid even without a Catholic priest, provided the Church had previously dispensed from the *impedimentum disparitatis cultus.*

By the new law of August 2, 1907, marriages between Catholics and Jews are viewed like mixed marriages, therefore the ceremony in order to be valid is to be performed before a Catholic parish priest (for certain exempted districts exceptions are made) (Num. XI, Par. 2, of the decree).

The manner of performing the ceremony would be, as in mixed

marriages and in accordance with the *jus commune* (regardless of the secured dispensation) the passive assistance in its technical sense (*Acta S. Sedis,* 1907, p. 571). Our remarks above, about the moderation by the new law of this passive assistance in the case of mixed marriages, will also apply here. Commonly there hardly ever occur dispensations *ante matrimonium* in such cases; they do occur, however, for the validation of a civil marriage, or, on the deathbed, of a concubinate.

(e) *Protestants and Jews.*

As in other instances of marriages among non-Catholics the question of validity may come up if after the ceremony one or both parties enter the Catholic Church. In accordance with the previous law a marriage between Jew and Protestant could be validly entered, without regard to the Catholic priest, in all those cases where the Protestant party was not bound by the Tridentine form. But even if the Protestant party was bound, many canonists claim that the exempt Jew would impart to the Protestant party his exemption.

The decree *Ne temere* demands for the marriage between Protestant and Jew in no case and nowhere the presence of a Catholic parish priest (Num. XI, Par. 3, of the decree).

In facto such marriages will be invalid, nevertheless, because of the impediment *disparitatis cultus.*

(f) *Apostates and Jews.*

An apostate, according to former Canon Law, was treated in regard to the form of marriage the same as a heretic (Protestant), hence the same regulations, which heretofore governed marriages between Protestants and Jews, applied also to alliances between apostates and Jews. Whether the apostate before his apostasy was Catholic or Protestant made no difference according to the old law.

The new decree makes again a distinction between apostates from Catholicism and such from Protestantism. The former can be validly married to Jews only before a Catholic parish priest (except in exempted territories) (Num. XI, Par. 2, of the decree). Apostates from Protestantism can, always and everywhere, be validly married to Hebrews without a Catholic parish priest (Num. XI, Par. 3, of the decree). The impediment of *disparitatis cultus* applies here and hence such marriages are invalid *in facto*, a dispensation not having taken place.

(g) *Catholics and Infidels.*

Here is to be ascertained, first of all, whether the infidel party was formerly either a Catholic, a Protestant (schismatic), Hebrew, or has grown up from childhood without Baptism and religion. The previous law treated an infidel who was formerly Catholic or Protestant in the same way as a heretic, and marriages therefore between a Catholic and a baptized infidel were classed with marriages between Catholics and Protestants. The infidel formerly a Jew, and those from childhood without Baptism and religion, were viewed as unbaptized, and to these the same rules applied as in marriages between Catholics and Jews.

The papal decree of August 2, 1907, deals more rigidly with the infidel formerly a Catholic than with others. Marriages between Catholics and Catholics become infidels are only valid, everywhere, when performed before a Catholic parish priest (Num. XI, Par. 1, of the decree). The impediments are to be considered. A dispensation is necessary for lawful marriage. Catholics and other infidels (who were not Catholics) can as a rule only be validly married before a Catholic parish priest, special laws for certain localities and territories allowing of exceptions (Num. XI, Par. 2, of the decree). The impediments are of course not to be overlooked.

(h) *Protestants and Infidels.*

Before the decree *Ne temere* an infidel formerly a Catholic was viewed in regard to marriage the same as a heretic. Hence in regard to the form of marriage, alliances of Protestants with infidels who had previously been either Catholic or Protestants were classed with marriages among heretics, and to marriages between Protestants and unbaptized infidels the same rule was applicable as to marriages between Protestants and Jews.

The new law discriminates also in this case against the infidel who has been a Catholic. A marriage between such an infidel and a Protestant can as a rule be validly performed only before a Catholic parish priest, but in certain exempt districts and localities the validity of such marriage is recognized by Rome also without the assistance of a Catholic priest (Num. XI, Par. 3, of the decree). The impediment of *disparitas cultus* between baptized and unbaptized would have to be removed.

(i) *Jews and Infidels.*

In the sense of the old law a marriage between a Jew and an infidel who had been Catholic or Protestant, was classed with the marriage between Jew and Protestant. The marriage of a Jew with an unbaptized infidel was, as a marriage between unbaptized, not bound by ecclesiastical law and was valid always and everywhere without a Catholic priest.

The new law has again a separate regulation for the infidel formerly a Catholic. Unions between Jews and infidels formerly Catholics are valid only when the ceremony is performed before a Catholic parish priest (subject to territorial exemptions) (Num. XI, Par. 2, of the decree). Jews and infidels other than former Catholics can enter into a valid union everywhere without a Catholic priest (Num. XI, Par. 3, of the decree). The impediment of *disparitas cultus* is to be removed.

ALOIS SCHMÖGER, D.D.

XXXI. THE VALIDITY OF MARRIAGES AMONG NON-CATHOLICS OF THE SAME DENOMINATION

While the priest has nothing to do with the marriage ceremony in such cases, he will have to inquire into the validity of such unions if one or both parties after their marriage adopt the Catholic faith. For this inquiry he must regard not only the new decree *Ne temere,* but sometimes the previous law.

If such a marriage was entered before Easter, 1908, its validity is to be judged according to the older law.

When in the following the assistance of a Catholic parish priest is required it is to be understood to mean parish priest and at least two witnesses.

1. Marriage among Protestants (schismatics). Before the decree *Ne temere* the following distinctions were made:

(a) In non-Tridentine territories such marriages were undoubtedly valid regardless of the attendance of a Catholic priest.

(b) For certain districts special laws have been promulgated (so for Hungary, Belgium, Holland, Germany), which made such marriages valid, but unlawful.

(c) For Tridentine territory marriages entered by two Protestants are variously viewed by canonists, who are not agreed as to whether the presence of the Catholic parish priest was necessary for their validity or not. The Roman canonists and Congregations declare themselves for the necessity of the Tridentine form in the case of such marriages.

The decree *Ne temere* puts an end to all doubts by deciding that marriages among Protestants (schismatics) may after Easter, 1908, be validly contracted throughout the world without a Catholic priest.

It no longer seems to require the assistance of a Catholic priest even for lawfulness, because it says *nullibi ligantur ad catholicam matrimonii formam.*"

2. Marriages among Jews (unbaptized).

Ecclesia non judicat de iis, qui foris sunt. Jews who marry Jews were bound invariably by the *jus naturae* and *divinum* only, and never by Canon Law. Hence at no time Jews and unbaptized were bound by the Tridentine form of marriage, not even in Tridentine territory. Also under the new decree they marry validly and lawfully without parish priest and two witnesses (Num. XI, Par. 3, of the decree). Heathens, Mohammedans, in brief all unbaptized are in reference to the marriage laws classed with Jews.

3. Marriages among apostates.

Apostates are former Catholics or Protestants (schismatics) who have renounced their Christian faith; whether they have embraced another form of religion, or whether they live as free thinkers, is immaterial for the technical appellation. According to the former law apostates (without distinction as to whether they had formerly been Catholics or Protestants) were considered by the marriage laws the same as heretics. Therefore marriages of apostates were subject to the (above mentioned) regulations concerning marriages among Protestants. A distinction was made between Tridentine and non-Tridentine territory.

The new law is toward former Catholics more severe than toward apostate Protestants. If two apostate Catholics marry, their marriage can everywhere only be validly contracted before a Catholic parish priest (Num. XI, Par. 1, of the decree). If two apostate Protestants enter into matrimony the union is valid and lawful without a Catholic priest (Num. XI, Par. 3, of the decree). Should an apostate Catholic desire to wed an apostate Protestant, then as a

rule a valid ceremony can take place only before a Catholic priest; exception being made only for exempted places (Num. XI, Par. 2, of the decree).

What if such persons present themselves before a Catholic parish priest to be married? What is he to do? The impediment of *religio mixta* is not present, for in that regard both parties are regarded as heretics. Neither is there the *impedimentum disparitatis cultus.* The *ratio dubitandi* is in this case really only, (a) the excommunication, of the candidates for Matrimony, preventing the reception of a Sacrament of the living, and, (b) the co-operation of the priest at an unlawful wedding of this kind. Hence the priest will endeavor first of all to reclaim the apostate persons for the true religion, that they may be absolved from the censure. Should this be futile, then he must lay the case before his Bishop. Pope Pius VI in a similar case gives to the ordinary instructions to apply to Rome (Aichner, *Comp. Jur. Eccl.,* 1890, p. 666, nota 28). The case is really analogous to the marrying of impenitent candidates whom the priest tries in vain to bring to a proper frame of mind. Hence the Bishop could in my opinion, in an urgent case, even give of his own authority the decision warranted by the circumstances.

4. Marriages among infidels.

Three kinds of infidels may here be distinguished: Those who formerly were Catholics, those who were Protestants (schismatics), and, former Jews or persons from childhood without Baptism and religion.

If both infidel parties are former Catholics, their marriage before the decree *Ne temere* was regarded the same as the union of two Protestants; the new law regards the marriage only as valid, everywhere, if performed before a Catholic priest (Num. XI, Par. 1, of the decree). When two infidels, former Protestants, marry, the

old law likewise regarded them the same as Protestants. Corresponding to the new decree they can validly and lawfully marry everywhere without a Catholic priest (Num. XI, Par. 3, of the decree).

Two unbaptized infidels could formerly, and can now, be validly and lawfully married without a Catholic priest (Num. XI, Par. 3, of the decree).

An infidel who has been a Catholic, married to an infidel formerly a Protestant, are according to the older law regarded the same as Protestants. Under the decree *Ne temere* they can only be validly married before a Catholic priest, except in exempted places (Num. XI, Par. 2, of the decree). The impediment of *religio mixta* is not present here because both are regarded as heretics; neither of course the impediment *disparitatis cultus.*

If a former Catholic, now infidel, wishes to wed an unbaptized infidel party, the former Canon Law regarded it the same as a marriage between Protestant and Jew. The new law requires for the validity of the ceremony that it shall take place before a Catholic parish priest except in exempted places (Num. XI, Par. 2, of the decree). In this case the impediment *disparitatis cultus* is not to be overlooked.

The marriage between an infidel, former Protestant, and an unbaptized infidel was by the older rule regarded the same as a marriage between Protestant and Jew. The new decree allows their union as valid everywhere without a Catholic parish priest (Num. XI, Par. 3, of the decree), provided the impediment of *disparitas cultus* has been removed.

Should infidels who formerly were Catholics or Protestants come to a Catholic parish priest to be married, our remarks above, under marriages of apostates, about such a contingency would also apply in this case.

ALOIS SCHMÖGER, D.D.

XXXII. MARRIAGE IN DANGER OF DEATH

The Roman decree *Ne temere,* of August 2, 1907, brings about a moderation in the form of the marriage consent declared in *imminente mortis periculo* (Num. VII, of the decree). The term death-bed marriage would no longer cover such a case. The decree does not speak of dangerously ill, such as, for instance, is the requirement for Extreme Unction. *Periculum mortis* may be present even without illness, in the case of those, for example, who are condemned to death, of soldiers before battle, of shipwrecked, in time of persecution when Catholics are threatened with death.

Before the decree *Ne temere,* Canon Law knew of no universally valid moderation of the Tridentine form prescribed in danger of death. Even in *periculo mortis* a marriage was only valid if contracted before the *parochus proprius* and at least two witnesses. On February 20, 1888, however, exception was made by Pope Leo XIII for *aegroti* (not therefore for shipwrecked, etc.), in danger of death, if there was no longer time to apply to Rome, but only in these two instances, namely: 1. In the event of a civil marriage, and 2. In the case of concubinage. For other cases (the case, for instance, of repairing the reputation of a woman with whom the man now in danger of death does not live) the exemption does not apply. In these two cases, then, the diocesan ordinary can dispense from all impediments to marriage (*excepto prebyteratus Ordine et affinitate lineae rectae ex copula licita proveniente*); with faculty to delegate a parish priest, an assistant or other priest. According to the decision of the *S. Cong. Officii,* of December 13, 1899, the ordinary on the strength of these exceptions can dispense even from the impediment of clandestinity (*Acta S. Sed.,* 1899-1900, p. 500; 1907,

pp. 546 and 547). Thus the ordinary is empowered in such cases to dispense through any priest to the effect that a couple may be validly married without the presence of parish priest and witnesses. This decree of Leo XIII is not superseded by the decree *Ne temere,* because Num. VII of the new decree of Pius X is a *lex generalis,* but the decree of Leo XIII a *lex specialis. Lex generalis non derogat speciali.* Other exemptions from the form of marriage consent in danger of death did not exist before Easter, 1908.

The new decree of Pius X effected, after Easter 1908, a universally valid moderation in the form of marriage in danger of death, in so far as the marriage is valid and lawful if it takes place before *any* (Catholic) priest and two witnesses. Thus the parish priest of the domicile (*parochus proprius*), or the parish priest of the place where the marriage is entered, are not required to assist, not even a *parish* priest. Any priest, may he be curate, chaplain, professor of theology, spiritual director, etc., may perform such a marriage ceremony validly and lawfully. Without witnesses, however, the priest alone assisting, the marriage would be both invalid and unlawful; it would be so also before two witnesses without a priest. That witnesses are required absolutely and invariably is wisely ordained by the Church, as in such cases, with publicity excluded, a partly unconscious, dying patient might often, and for very questionable reasons, be hurriedly married to some one (*Acta S. Sed.,* 1907, p. 573). Furthermore the precept is calculated to protect the priest against charges of unbecoming conduct, or of undue influence. Witnesses are easily obtainable, the nurses for instance. The provision that any priest may be chosen is no doubt made because such a marriage may be resolved upon when a priest is there to administer the last Sacraments, during a sick call of the priest, on occasion of a visit by a befriended priest, or in an emer-

gency case in hospital or prison when the chaplain but not the parish priest is within call, etc.

In order, however, that such a marriage in danger of death be valid and lawful the following conditions are provided:

1. There must be lack of time to apply for delegation to the ordinary or to the parish priest, or to summon them or a delegated priest (the curate for instance). If time permits of securing delegation from the ordinary, or to summon the parish priest or his delegate, then such a marriage performed by another priest would be invalid and unlawful.

2. The ceremony must be desired to set at peace the conscience (*ad consulendum conscientiae*) and (if there are pre-nuptial children) to legitimize the children. *Ad consulendum conscientiae* will apply usually in cases of civil marriage or of concubinage. Unfortunately it is not stated in the decree whose conscience may be appeased. Does it apply only to the conscience of the dying person (or one in danger), or has a priest the right to proceed if it is only a question of the peace of conscience of the (healthy) mistress of one in danger, or the peace of conscience of respectable parents who urge to have matters settled? The peace of conscience referred to is probably that of the dying, or one in danger, because the approaching step into eternity makes him fearful and he has not much time to put things in order; the other persons are only threatened in their reputation or material welfare. The decree manifests solicitude for the children, not for other relatives. The danger of financial loss or impairment of honor is not mentioned in the decree as sufficient reason for a facilitation of the marriage form.

Regard for peace of conscience, and therewith the validity and lawfulness of the facilitated form are absent, if the one in danger is not disposed to contrition or penance (an irreligious person for

instance whose conscience does not much trouble him) : In such case the marriage could not take place before a casual priest unless it were for the legitimizing of children. When it is only a question of legitimizing children, but not of appeasing the conscience of the one in danger, one might doubt according to the strict wording of the decree whether a casual priest could perform the ceremony, because it says *ad consulendum conscientiae ET* (not VEL) *prolis legitimationi.* In my opinion the *et* has here, as in frequent other instances, the same meaning as *vel,* because it would not be just to let the children suffer for the father's indifference, and the decree manifests special solicitude for the children. What is to be done when concern is had only for a legacy, material advantage, reputation of the persons not in danger, or in a case of insistence by relatives, in brief, when the purpose has nothing in common with peace of conscience or the legitimizing of children? In such cases it would seem that a casual priest cannot validly and lawfully perform the ceremony. Solicitude for peace of conscience will not be a valid reason, either, when the case is one of an existing marriage, which is invalid on account of a secret impediment, if this fact is not known to the one in danger and can not be communicated to him (in which case the children are legitimate). *Ad consulendum conscientiae* would, furthermore, not furnish a valid reason if the one in danger by means of the facilitated form simply wished to hurry the matter unnecessarily, or, on account of personal antipathy, did not wish to be married by the parish priest or his assistant, or for any other similar unworthy reason.

The new decree does not exclusively mention the two cases: Validation of a civil marriage or of a concubinage. Other cases may be presumed, in which a dying person (one in danger) wishes to set his conscience at rest by a marriage, for instance a person feels

impelled by conscience (in consequence perhaps of an admonition by the *Confessarius*) to marry the person whom he has seduced, from whom he lives apart and who has borne him no children; or he has become engaged honorably and wishes to carry out his promise on his deathbed, or the one in danger wishes to make a certain restitution by marrying.

In the decree *Ne temere* it is not required that the marriage in the facilitated form, in cases of danger of death, must be performed secretly, *i. e.,* with two confidential witnesses and excluding all publicity. Secrecy or publicity is left to the priest's good judgment.

Of marriage banns in such cases the decree makes no mention. If, in so urgent a case, the priest had to apply first of all for dispensation, the facilitated form would become illusory, because parish priest or assistant might just as quickly be summoned, or a delegation from the ordinary obtained.

The regulations concerning the marriage in danger of death find application also in cases of mixed marriages (Catholics and Protestants), or of marriages of apostate Catholics. In these cases the stipulation concerning the Catholic education of the children must not be overlooked (Num. XI, Par. 1 and 2, of the decree).

If the decree of Leo XIII, of February 29, 1888, is still in force, along with the decree of Pius X, of August 2, 1907, what distinction is to be made in corresponding cases?

The distinction is as follows:

1. The decree of Pius X is a universal one and applicable for every kind of danger of death, therefore, for instance, also for shipwrecked and for criminals sentenced to death; that of Leo XIII is a special one and applicable only to the sick.

2. Pius X decrees regardless of impediments; Leo XIII refers to

cases in which an impediment is present and a dispensation necessary.

3. Leo XIII decreed only for the legalizing of a civil marriage or a concubinage (therefore, for instance, not including the case of one who wishes to marry a seduced person living apart from him); the decree of Pius X has for its general purpose the appeasing of the conscience and legitimizing of children.

4. Leo XIII speaks of *gravissimum mortis periculum;* the decree of Pius X is less restricted and ordains for *imminente mortis periculo.*

5. Leo XIII makes it a condition that there is not sufficient time to apply to Rome; Pius X requires only that, if possible, the ordinary or parish priest be summoned.

6. Leo XIII renders possible (by dispensation from the impediment of clandestinity) a marriage even without priest and without witnesses; Pius X prescribes for the validity and lawfulness at least a priest and two witnesses.

7. In order that a priest may avail himself of the decree of Leo XIII (to grant dispensation) he must be delegated by the ordinary; in order to assist at the marriage according to the new decree of Pius X no episcopal authorization is necessary, because just those cases are intended in which there is no time to apply for delegation. Therefore, if in a marriage in danger of death an impediment to marriage were present (for example relationship), then both decrees are applicable: The casual priest must apply to the ordinary for a dispensation from the impediment, otherwise the marriage would be invalid on account of the existing *obstacle;* and the local parish priest must be beyond reach, otherwise the marriage would be invalid on account of the *form* (unless the priest, to whom

is granted the faculty of dispensation, is by the ordinary at the same time delegated to perform the marriage).

A Roman Consultor of the *Cong. S. Concilii* remarks in his opinion on the new decree: *"Hacc matrimonii celebratio in extremis non videtur absolute requiri ad salutem"* (*Acta S. Sed.*, 1907, p. 574). The decree itself does not say *matrimonium contrahi DEBET*, but *POTEST*.

Alois Schmöger, D.D.

XXXIII. MARRIAGES IN CASES OF EMERGENCY

In cases of emergency, as distinguished from cases in danger of death, the life of either of the candidates for a marriage is not in danger. The emergency is found in the general impossibility in a certain district, province, or country, to have the marriage performed by a parish priest.

Even before the decree *Ne temere* (of August 2, 1907), various Roman decisions, and interpretations of canonists, had occupied themselves with the question as to what was to be done in a case when the *parochus proprius* could not be had to perform a marriage ceremony (Gasparri, De Matrim., 1893, II, n. 965 et sequ.; Santi, Praelect. Juris. Con., 1886, lib. IV, tit. III, n. 47 et 48; Aichner, Compend. Jur. Eccles., 1890, p. 661).

The following rules had been adopted:

1. If the Catholic parish priest is not obtainable for the marriage ceremony the parties can give their consent validly and lawfully before two witnesses (without parish priest, even without any priest), provided, 1. That the emergency must be a universal one (namely for the whole region, not a personal only for the couple). The emergency does not have to be a physical one, a moral one suffices. The latter would be the case, if the parish priest can only be had *difficillime* and *periculosissime* (not *difficile* or *periculose*); so Pius VI to the Bishop of Geneva, October 25, 1793. Circumstances like the presence of an impediment, or the personal infirmity of one of the contracting parties, do not constitute of themselves cases of emergency; nor the fact that one or more parish priests refuse to assist.

2. This emergency must be expected to last at least for a month

so that the couple would have to postpone their marriage for a month at least (not merely for a few days or weeks).

3. That the *parochus proprius* or his delegate (curate or assistant) is not to be had.

4. Also the delegation (even by letter) of another priest by the ordinary is not possible.

All these four conditions must prevail together, not merely one *or* the other. If, for instance, in cases of emergency the delegation of a priest by the bishop is possible, then the couple can not be married merely before two witnesses and without a priest.

Even if in such cases a civil marriage, or a marriage before a Protestant minister are possible, Catholics can nevertheless marry validly and lawfully before merely two witnesses (without an official or clergyman), because the Catholic Church attributes no sacramental effect to the two forms mentioned. A declaration of consent merely between man and woman *without* witnesses would even in case of emergency be invalid and unlawful. Witnesses must be present. A case where no witnesses can be had is hardly possible, because even seven-year-old children, or women, or relatives, even the unbaptized, etc., may be valid witnesses.

In such a case of emergency a publication of the banns is of course out of the question.

The decree *Ne temere,* in Num. VIII, has simply assembled the law as expressed in the different Roman decisions and interpretations by canonists. But three new conditions have been added, namely:

1. The case of emergency is now present only when *no* Catholic parish priest can be had (formerly *parochus proprius*).

2. The contracting parties must *formally* declare their consent (*formalis consensus*); a tacit consent does not suffice. The declara-

tion no doubt can take place not only by words, but also by signs, otherwise deaf mutes or the dumb could not marry.

3. The emergency must at least *have lasted* a month (*conditio a mense jam persevcret*). These rules apply also to mixed marriages and marriages with apostates (Num. XI, Par. 1 and 2, of the decree).

Kindred cases of emergency may occur in times of persecution, or in a Kulturkampf, in times of war; in widely extended missionary districts, etc.

Alois Schmöger, D.D.

XXXIV. ARSON AND RESTITUTION

Catharine, the wife of Andrew, set fire to their house, unknown to Andrew. When the latter learned of the true state of affairs he did collect the insurance of $1,000, but threw the money down before his wife, saying angrily: "Here, take this unrighteous money if you will. I want none of it." Andrew troubled himself no further about this money, and Catharine died several years after, fortified by the last Sacraments. Some years after Andrew also falls ill. The incendiary fire and the money collected, for the use of which he can not account, weigh heavily upon his conscience. Part of the amount he can refund, but not the entire sum, without interfering with his children's yet unfinished education and without rendering impossible their further study for the professions. Is he obliged to make restitution, and of the whole sum, or may he presume that his late wife put the affair in order?

Answer. The money taken by Andrew belonged to others, and was not his due, because the fire insurance companies do not agree to pay damages directly caused by the insured, or by his wife, or by his near relative. All rightful claim to insurance money is absent, also in conscience, if malevolence, or grievous theological guilt, has caused the fire.

To the money accepted by Andrew adheres, therefore, the obligation of restitution. Although Andrew, in order to protect himself and his wife from the greater evil of public dishonor and against severe punishment by the authorities, was allowed to take the money, he could only do so with the intention of refunding the money as soon as possible to its rightful owner. The basis and extent of the obligation to make restitution is in general, and can only be for

Andrew, 1. Unlawful injurious action, or 2. Unlawful acquisition of another's property. It is evident that both these conditions existed in regard to Catharine. But here it is not a question of Catharine's obligation to make restitution, but of Andrew's, and in this regard the answer will vary according to the circumstances, which have to be ascertained. We have to decide the case on the following suppositions:

1. First of all let us suppose that the money was applied for the benefit of Andrew's family; in such case it is incumbent upon Andrew to refund the money, because he has been unlawfully enriched by it, as it went to pay expenditures which otherwise would have had to come out of his own income.

The obligation of restitution would, furthermore, be Andrew's, no matter how the money had been used, if he, with grave theological guilt, has put the money in other hands than the owner's, with the knowledge that Catharine would not make the restitution.

Should one or the other of these suppositions be a fact, then the obligation of restitution rests, or *rested,* upon Andrew. We say the obligation rests or *rested,* for there is a possibility that it no longer rests with him, because, at least in part, restitution may have been made already. In order to decide this we must first consider the question: To whom must the money be refunded? Compare in this connection the author's *Theologia Moralis,* ed. 9, a. I, n. 1134. It is a practical probability that not the shareholders of insurance companies, but rather the great number who insure with them their belongings, by payment of yearly premiums, are the actual sufferers, because the companies include in their calculation of premiums the average cases of arson which yearly take place. From this follows the further practical probability that, instead of to the great number of insured, the restitution may, as a rule, be made to the poor or to

some charity; for where the amount to be refunded would be divided among so large a number, especially if the individuals are not all known, and the individuals have not been injured in a grave *materia,* then, according to the general opinion of theologians, the restitution can for prudent reasons be made to the poor or to some charitable purpose, because on the one hand we may presume this to be the reasonable will of the insured, and because on the other hand the poor and the public charities are that part of human society, to whom the superfluity of temporal goods, or the portion of no avail to the actual owner, is due (Compare Liguori, I. 3, n. 589 and 595).

If restitution to the poor, or to some charity, is lawful in Andrew's case, it follows that Andrew, by alms and other donations made by him since the incendiary fire, or rather since collecting the insurance money, has already refunded part of this money.

This is the first ground to reduce the amount which Andrew is obliged to refund.

A second ground for a reduction may perhaps be found in Andrew's circumstances, which make the money needful for the further education of his children. If one of them has chosen the priesthood for his vocation, or some other calling similarly to the welfare of mankind, the furnishing of the means for such vocation, and for the preparation therefor, is a pious purpose, such as we have said can, in our case, take the place of restitution to the creditors. Although it is advisable that of a debt arising from an obligation of restitution the entire sum should not remain in the debtor's family, on the claim of poverty or *causa pia,* but that an outside *causa pia* should be preferred, yet under such title at least a considerable portion of the money may remain in the debtor's possession.

For these reasons alone, the money still to be made good, even if

Catharine has not made restitution and if Andrew is a culpable accessory, may be reduced to at least one-half, and in case of need to less.

II. It is, however, quite possible that our supposition, of Andrew's theological guilt and of the expenditure of the money for the benefit of the family, is not a fact. One would suppose that it could not have escaped the husband's notice if the money had been really expended for the family or for household needs. There is of course the possibility that the wife alone had these matters in hand, the husband having relinquished his control over them. Then the matter would remain in doubt. A circumstance seemingly in favor of the opinion that restitution had been made—or an application of the money equal to restitution—is that Catharine died fortified with the last Sacraments, and had said nothing before her death to her husband of being burdened with the duty of restitution. A difficulty to do this was not present in this case, Andrew being aware of the wife's act upon which the obligation of restitution rested. Still there is no certainty, and a mere possibility could hardly suffice for a complete exoneration of Andrew. Yet it will be permissible for this reason to make a still further reduction of the obligation and of the sum to be refunded, in the supposition of Andrew's theological guilt.

In conclusion it remains to inquire about Andrew's theological guilt or non-guilt. We have remarked above that no theological guilt can attach to Andrew because he took the money; he was compelled to do so to prevent greater evil to himself and to his wife. There would have ensued the theological sin of injustice had he appropriated the money as his own property. That this evidently was not his intention, is shown by his action directly afterward, when he declared he would have none of it. Of course, having

received the property of another—having, as it were, taken it in his keeping—there devolved upon him, viewed objectively, the obligation to care for its rightful use. This he neglected to do, having left the matter to his wife and to her conscience. Nevertheless there is no proof that Andrew saw a grievous fault therein, or that he was conscious of his responsibility for the use of the money. If Andrew had not much judgment in matters of law he may have believed that he had thrown off all responsibility when he delivered the money to the one who in the first place bore both the guilt and the obligation to make restitution. Andrew's conscience should therefore be examined. If his *bona fides* is proved, then he is to be absolved from all obligation of restitution, unless it is proved that the money was applied for the family's use; in the case of *mala fides,* or, if it is shown that the money was used for the family, restitution would have to be made, but in the reduced degree as explained above.

Aug. Lehmkuhl, S.J.

XXXV. MARRIAGE BY COMPULSION

Illicit relations with Caius, a gentleman of high standing, have not remained without consequences for Amelia. For the sake of his own reputation Caius urges Amelia to marry Brutus, for whom she does not care; eventually, however, she does marry Brutus. Is this marriage valid? What grounds are there for and against its validity?

In this case the question arises whether the impediment of compulsion invalidates this marriage. To answer this is not an easy matter, owing to the lack of an exact account of the circumstances. First of all we must presume that Amelia gave actual consent. Should her aversion for Brutus have moved her to give only pretended consent at the marriage, no doubt could exist that the marriage is invalid. We presume then that she gave her consent; it was, however, induced by fear. Now *Impedimentum Metus* invalidates the marriage if the fear is great, unjust, and caused for the purpose of entering the marriage. By *unjust* it is understood that it must have been occasioned by another person. For the fear that arises only from one's inner self, *ab intrinseco,* does not make a contract invalid, so long as there exists sufficient deliberation. *Ab intrinseco* is the fear that proceeds from the matter itself, and not from the person who threatens. D'Annibale, I, n. 138, well expresses it thus: *"Diciter ab intrinseco, cum res ipsa metum facit; ab extrinseco: cum alius infert metum ad consensum extorquendum."* Hence not only is the fear of an illness, the symptoms of which we observe in ourselves, *ab intrinseco,* but also the fear of infection, the fear of a thunderstorm, of a storm at sea, of hell-fire, etc. Fear such as this may move us to do things which we do not like to do, never-

theless it leaves our power of determination quite intact, we do something, and will to do it, although with an effort. If, however, the fear is due to the threat of another person, then a certain exterior compulsion is present, which, though it leaves us freedom of will and deliberation, induces an action which is not so much dictated by our will as by the pressure upon us. Hence Alexander II says, in *De Sponsalibus: "Cum locum non habet consensus, ubi metus vel coactio intercedit, necesse est, ut ubi consensus cujusdam requiritur, coactionis materia repellatur."* When, however, there is *metus ab intrinseco,* then he decides for the validity of the act, for instance, *De Regularibus,* c. 17.

Hence it is evident that the *impedimentum metus* imposed by the Church applies only to the fear of a threat if it is unjust, 1. If no just claim exists for the marriage, and 2. If the evil threatened can not justly be inflicted. Therefore if a bride forces her tardy betrothed, by threats of legal action, to marry her, she is justified in so doing; also if a judge gives the seducer of a young girl the choice to marry her, or to go to prison, the resulting fear is just, and does not, therefore, render the induced consent invalid.

Let us now solve our present casus. A marriage between Amelia and Caius apparently is out of the question, either because of inequality of station or because Caius is already a married man (there is no mention of social injury resulting for Amelia from her relations with Caius). Therefore a love for Caius is not the reason for her aversion to Brutus. Caius urges or, as is understood here, compels, Amelia to a hasty marriage with Brutus, but by what means? If he only points out to her the disgrace that will befall him and her, and if Amelia is thus induced to marriage, there would be no *impedimentum metus*—such fear would be *ab intrinseco.* Should he, however, threaten to do her harm, or to disgrace her,

then there would be the impediment of fear; the fear being great, unjust, and compelling to marriage.

We may suppose the case to be practically as follows:

Caius has a large household in which Amelia is servant, and likewise Brutus. Brutus, though knowing of her condition, is willing to marry Amelia, out of regard for his master and for his own benefit, but Amelia does not want him. The master threatens dismissal and withdrawal of support. Amelia sees a hard future before her, and in order to escape this hardship, she gives her consent. Under these circumstances the impediment of fear would be present.

There is a considerable misfortune threatened unjustly, because Caius should justly provide for the expected infant, and the purpose of the threat is to induce marriage. Should the master, however, be willing to do in any case his duty in regard to Amelia, and only threaten to discontinue his special generosity, then there would be no injustice (in the particular threat) and therefore no impediment.

The confessor should, therefore, closely question Amelia without saying anything about an invalidity of the marriage. Should he find that the *impedimentum* is undoubtedly present, he should meanwhile not disturb the *bona fides,* but examine into the whole situation as to whether an agreement between Amelia and Brutus can not be induced. If Amelia can be moved to consent actually, Brutus being still agreeable, nothing further is required, because the *causa metus* is then certainly removed. But if Amelia of her own will insist upon a separation, the confessor must refer her to the bishop, because then the whole case belongs to the *forum externum.*

In this solution Brutus' previous knowledge of Amelia's condition is presupposed; otherwise we should have to discuss the wrong that Caius and Amelia inflicted upon him.

W. Stentrup, S.J.

XXXVI. NULLITY OF A MARRIAGE OWING TO NON-FULFILMENT OF AN IMPOSED CONDITION

Silvia, when receiving the last Sacraments, confesses that in her younger days she had unlawful relations with her present husband Claudius, but also with one Ignotus, and that her relations with the latter had not been without consequences. A marriage with Claudius offering better prospects she led him to believe that he was responsible for her condition. Accordingly, on this condition, he married her, she declaring that he was the parent of the expected child. They have been married for many years, and more children have been born to them. The child conceived before the marriage is also living.

How about the validity of this marriage?

There can be no *impedimentum erroris*. According to Canon Law such error is essential only which excludes the necessary consent *jure divino* (the *error conditionis servilis* forms an exception)—this would apply in the case of an error of person. The error of person, an error of identity, however, annuls the consent, only under certain suppositions; the intention must be absent. The error in quality, though always accompanying the error of identity, differs essentially from it, and does not take away the validity of the contract, not even if the quality about which there is error is of decisive influence upon the resolution to consent; the consent is not excluded. The important so-called *error qualitatis in personam redundans* is not merely an error in quality, but a special kind of error in person.

The error in our case is merely an error in quality—Claudius erred concerning the paternity of the child—though the error influenced his resolution.

The marriage is therefore not invalid because of error. Let us inquire whether it is invalid by reason of non-fulfilment of a stipulated condition.

What is understood by a condition? A condition is that which is requisite that something else should take effect. It is apparent from the definition of condition, that, if the condition is not fulfilled, the contract is not intended and therefore not valid, *ex jure naturali.*

The question is then whether we are dealing in this case with a condition that would abolish the consent, and therewith the validity of the marriage. We are informed that: Claudius married Silvia upon the condition, claimed by her, that he was the parent of her expected child.

Was this a real condition? Did Claudius intend to make the validity of the marriage dependent upon the fact of his paternity, or not?

On the answer to this question the confessor would have to lay stress in his inquiry into the facts. If Claudius made it an actual condition, then the marriage is invalid, even in the case that the condition was not made in the form prescribed by Canon Law, *i. e.,* not explicitly stated before parish priest and witnesses. The neglect of this formality does not make an *in jure naturali* void marriage a valid one, it only forfeits to the one who imposed the condition the right to claim it in *foro externo.*

As regards the re-validation of a marriage invalid on account of lack of consent, such does not take place *eo ipso* by reason of a long cohabitation with the other party. There is necessary an actual, conscious, removal of the lack of intent. In the foregoing case it would mean a conscious renunciation of the imposed condition, and ac-

quainting the other party with the renunciation, the two conditions *jure divino* requisite for renewal of consent.

That such a renunciation was not made is attested by the fact that Silvia is not conscious of it.

If, therefore, the marriage was entered into under an actual condition, then it has been invalid from the very beginning.

In the solution of this case the all important question is: Had Claudius intended an actual condition, or only had an explicit supposition?

HUBERT GERIGK.

XXXVII. ADMINISTRATION OF THE LAST SACRAMENTS TO CHILDREN, OVER THE AGE OF SIX, IN DANGER OF DEATH

Sinite parvulos venire ad me et ne prohibueritis eos: talium enim est regnum Dei (Mark x, 14).

There can be no doubt that the parish priest, after the example of his Lord and Master, must in a special manner concern himself about children. Of an especial truth are the words: He who has a hold on youth, to him belongs the future. We may go farther and say: To him belongs also the present. For he who wins the children over to his sacred cause and arouses them for it, has in many cases also the parents; with and through the children he gains influence upon the family. A chief part of the priest's effort must, therefore, be directed to the care of the children. But if the priest has to bestow special attention upon children in the normal state, it is befitting and right that he should do the same for those in sickness. How could he refuse his assistance to a child at the very moment when it needs him most? Why should he not make it his special concern to clear the way to heaven for a child? Let us inquire then what form this spiritual care should take in the case of dangerously sick children over the age of six years; what is to be said of the administration of the last Sacraments in such cases?

The *Rit. Rom.* (tit. V, ep. 4, n. 1) prescribes: *Parochus hortetur parochiales suos, ut ipsum admoneant, cum aliquem in parochia sua aegrotare contigerit, praecipue si morbus gravior fuerit.* This precept is quite general (*aliquem*). It has reference not only to those who have already been admitted to Confession and Holy Communion, but to all the faithful who have attained the use of reason,

all those, therefore, capable of an actual sin, whether of *modo perfecto* or *imperfecto*, whether mortal or venial. This, however, can, according to the *sententia communissima* of theologians, not be doubted of children who have passed their sixth, or at most their seventh year, under generally normal conditions.

Such child may, therefore, receive Extreme Unction, and the priest is bound to administer it to him. Hence the Provincial Synod of Prague in 1860 proclaimed: *Pueris infirmis cum ad eam aetatem pervenerint, in qua peccare potuerunt, quamvis nondum communicaverint, administrandum est sacramentum extremae unctionis.* Since, however, this Sacrament is a Sacrament of the living, it must, as the rule, be preceded by the Sacrament of Penance, or at least by sacramental absolution.

In this sense the Provincial Synod of Cologne of the same year expresses itself: *Cum extrema unctio sit sacramentum vivorum, communiter in suscipiente requirit gratiam sanctificantem; hinc, si fieri potest, peccatorum praecedat confessio, si ea jam, qua par est, ratione fieri nequit, saltem absolutio. Fidelis omnes, qui graviter decumbant, modo olim rationis fuerint compotes, ut peccata committere potuerint, capaces sunt hujus sacramenti; hinc etiam aetate juniores licet primam communionen nondum susceperint.* The decrees of both these Provincial Synods have been approved by the Holy See; therefore they are not merely diocesan precepts but rather moral dogmatic decisions in concerning what should take place in the case of dangerously sick children capable of actual sin (children, therefore, above their sixth year). Attention should here be given also to the ecclesiastical regulations anent the reception of the Sacrament of Penance when in good health. The *Conc. Later. IV* says: *Omnis utriusque sexus, postquam ad annos discretionis pervenerit, omnia sua peccata, saltem semel in anno, fideliter con-*

fiteatur. Moreover the *Catech. Rom.* (*De Poenit.* 48) directs: *Eo tempore confessionem puero indictam esse, cum inter bonum et malum discernendi vim habet, in ejusque mentem dolus cadere potest.* Though this is not to be applied to well children above their seventh year, it must be held that to children, in danger of death, it is certainly a priest's sacred duty to administer this Sacrament. Children above their sixth, at any rate above their seventh, year may, therefore, receive both these Sacraments, if they are in danger of death, and the priest is obliged to administer them. As a matter of course general absolution can be given to them.

Objection should not be made here that these Sacraments when administered to such young children might be exposed to irreverence. It should rather be remembered that the Sacraments were instituted by Christ *propter nos homines et propter nostram salutem.* No doubt, with the duty of administering these Sacraments is joined the other of preparing young children as well as possible.

Even less valid is the objection that children at this age have, at most, venial sins upon their conscience, and that even these on account of imperfect knowledge are only to be viewed as incomplete. Even admitting this to be a fact, which it is probably not in all cases, in God's sight even the least venial sin is by no means a trifling matter and it must be wiped out. Why then should not a priest come to the sick child's assistance? Why should he not help to free the child from his small faults and open to him the door of heaven? And, in conclusion, can we not be mistaken in a child's mental capacity? Even of young children it is often true: *Malitia supplet aetatem.* The case may even occur that such a child may have committed a mortal sin, or at least is capable of committing one. Therefore it would be inexcusable to refuse to a child these Sacraments. At all events a zealous priest ought, and should, even

with not very bright children, choose the safer way and in danger of death administer these two Sacraments (conditionally if necessary). St. Alphonsus also holds so. To the question: *An hoc sacramentum conferri possit pueris, de quorum usu rationis dubium vertit?* he replies:

Sententia probabilior dicit, tales pueros ungendos esse sub conditione, quia per conditionem jam salvatur reverentia sacramenti, et aliunde justa adest causa illud ministrandi sub conditione, ne priventur pueri fructu tam salutari hujus sacramenti (S. Alph., I. 6, n. 718).

Vicar Lebherz.

XXXVIII. THE ADMINISTRATION OF THE LAST SACRAMENTS (INCL. VIATICUM) TO DANGEROUSLY SICK CHILDREN UNDER SIX YEARS OF AGE

In the preceding paper there is discussed the question whether the last Sacraments may be administered to dangerously sick children over six years of age. Of course it was not intended to say that the Sacraments there mentioned may not even be administered to children of five (or four) years of age, at least conditionally.

Let us pass, therefore, to the question: May the Viaticum be given to such children? and, if so, is the priest obliged to do so?

We must here observe first of all, that for the reception of Holy Communion a greater maturity of mind is required than for the reception of Extreme Unction and the Sacrament of Penance. On the other hand it should not be forgotten that there is not requisite for the reception of the Holy Eucharist *modo Viatice* the same maturity of mind as for the Communion *ex devotione*. SUAREZ states—and in this opinion he is supported by other theologians: *"De communione facienda in articulo mortis non est eadem ratio."* At any rate it suffices here that the child is able to distinguish the Sacrament from ordinary food, to adore it and receive it reverently. In this sense BENEDICT XIV expresses himself:

"Poterit episcopus synodali constitutione parochus compellere ad administrandum ss. viaticum pueris mox decessuris, si eos compererint tantam assecutos judicii maturitatem, ut cibum istum coelestem et supernum a communi et materiali discernant; haud enim leviter delinquere credimus, qui pueros etiam duodennes et perspicacis ingenii sinunt ex hac vita migrare sine viatico hanc unam ob

causam, quia scilicet nunquam antea, parochorum certe incuria et oscitantia, eucharisticum panem degustarunt" (De Synod. dioec. l. VII, c. 12, n. 1 et 3).

Under this supposition St. Alphonsus regards it a *sententia communissima,* that the Viaticum not merely may, but *should* be administered. *"Pueris, qui jam sunt compotes rationis in articulo mortis non solum communio dari potest, sed etiam debet"* (S. Alph. 6, n. 301). Benedict XIV denotes the contrary practise of parish priests as a *gravem abusum radicitus extirpandum.* According to Benedict XIV, and to St. Alphonsus, it is therefore a strict duty to administer the Viaticum *pueris, qui rationis compotes sunt.* Gury expresses himself still more positively. He replies to the question: *"An in periculo mortis communio tribuenda sit pueris, qui nondum ad sacram synaxim admissi sunt? Affirmo, quoad pueros qui sunt rationis compotes. Immo non solum eis dari potest, sed etiam dari debet. Ratio est, quia ex una parte pueri in tali periculo constituti tenentur ex praecepto divino communicare; ex alia parte utilitas eucharistiae tunc majorem dispositionem non exposcit. Graviter igitur errant parochi, qui viaticum huiusmodi pueris administrare nolunt"* (Gury II, n. 320).

These are probably the most important ecclesiastical precepts and utterances of theologians about the administration of the Viaticum to dangerously sick children. However, for our question whether to children before their sixth year the Viaticum may be administered, there is nothing gained from these quotations, as none of the passages quoted speak of children of six years of age. Indeed the above words of Benedict XIV appear to me as denying our question. He censures only parish priests who refused the Viaticum to children of twelve years on the ground that they had not before received Holy Communion. He would without doubt have censured

also those who refused the Viaticum to six-year-old children were they to be censured. These children have not only never received Holy Communion, but have not even received the Sacrament of Penance. It appears to me also that the passages, given before, in proof that Extreme Unction and the Sacrament of Penance are to be given to six-year-old children, speak against the administration of Viaticum. It is said there repeatedly: *quamvis nondum communicaverint,* or *licet primam communionem nondum susceperint.* There is, therefore, a distinction made here between the capability to receive the two first Sacraments, and the capability to receive the Viaticum. In SUAREZ there is, however, a passage which does not make this distinction. He says: *"Existimo in articulo mortis dandam esse communionem cuicumque homini habenti usum rationis ad peccandum et capaci confessionis et extremae unctionis."* He also adds that the child is obliged to receive, and the priest obliged to administer. SUAREZ, however, stands alone in this opinion. All others make use of the universal expression: *Qui sunt rationis compotes.* To these belong under normal conditions six-year-old children. But as I have already pointed out there is a distinction to be made between children who have sufficiently attained the use of reason to be capable of actual sin, and those who are so advanced even that they can reverently adore the Eucharist, and who are aware of what they are partaking. This is rarely the case with six-year-old children, and yet we must require this at least. It must be admitted that there may be six-year-old children who, after previous instruction, are capable of receiving the Viaticum. But even in such cases I believe the administering of the Viaticum should be omitted for reasons of prudence. In some cases of grave illness it will be impossible to prepare children sufficiently. If the priest administers Holy Communion to a certain capable and sufficiently instructed

child, and not to others, it is easy to see that unpleasantness will arise, on part of parents, etc. That such cases where the Sacrament can properly be administered will be rare, experience teaches. Experienced and zealous priests therefore observe this practise.

My opinion is that children before their sixth year may receive Extreme Unction and the Sacrament of Penance, and that the priest is obliged to administer them (sometimes conditionally). The Viaticum, however, can only be given in rare cases, and even then there is no obligation to administer it.

N. B.—It is evident that such children must be interred according to the *ordo sepeliendi adultos.* The *ordo sepeliendi parvulos* applies, as its wording demonstrates and as also the *Rit. Rom.* expressly declares, only to children *qui ante usum rationis eripiuntur et oratione Ecclesiae non indigent.* This is not the case of six-year-old children.

VICAR LEBHERZ.

XXXIX. NULLITY OF MARRIAGE BECAUSE OF ANTECEDENT INSANITY

S. married in March, 1886, the girl H., twenty-three years old. The latter, even before the marriage, had given unmistakable symptoms of mental derangement, which reappeared afterward and increased to such an extent that it was necessary to confine her as a raving maniac in an insane asylum, where she still is without hope of recovery. On July 14, 1894, S. obtained the civil decree of divorce for which he had sued, and on April 9, 1895, he married one A., who bore him several children. To appease his conscience S. applied to his bishop to annul his marriage with H., claiming that the necessary consent had been lacking owing to previous insanity of H. The bishop did not grant the petition because the nullity of the marriage had not been established. The metropolitan chapter to which S. then appealed decided the marriage in question was null and void. The defender of the marriage tie now appealed the case to the *S. C. C.* We give in the following the vote of the canonists of the *S. C. C.*, approved by the Congregation.

Without entirely voluntary consent no marriage can take place. Consent can be voluntary only when given by one who is the complete master of his actions and resolves upon the consent after mature deliberation. Canonists hold that in regard to the marriage contract the same deliberation is requisite as for the committal of a grievous sin. An insane person, therefore, can only then give the requisite consent for marriage if he or she has lucid moments and gives consent in one of these. These conditions, however, should not be pre-supposed, but must be proved beyond all doubt. If any doubt remains, then insanity must be pre-supposed, because it is the perma-

nent state. Applying this principle we find as follows: Many cases of insanity have occurred in H.'s family. As regards H. herself, since the years of discretion to within six months of the marriage she did things which were, to say the least, forewarnings of insanity. Two weeks before the ceremony unmistakable symptoms of insanity frequently showed in her. Thus she asked for the last Sacraments, although perfectly well. Even during the wedding ceremony there occurred manifestations of madness. As an instance, she tore the bridal wreath from her head, and only by force could it be replaced. When the moment came to step to the altar she hesitated, and only after urging followed the bridegroom. Again, she had to be asked three times before she would place her hand in the bridegroom's. On the evening of the wedding day she threw the wedding ring down on the floor and retired to sleep with her sister. The canonist concludes from these facts that the necessary consent to the marriage has been lacking and that for this reason the marriage is to be regarded as invalid.

HERM. KUSTGENS, D.D.

XL. A RAILWAY DISASTER CAUSED BY MISCHIEF

Audax, a mischievous farm hand, amused himself late one evening by misplacing railroad switches. His intention was to get the switchman angry. After a while along comes a train, runs into the wrong track and demolishes some cars standing there. The switchman escapes punishment of dismissal solely because of his previous good record, but he is sentenced to pay damages of one hundred dollars. After a time Audax goes to confession and asks whether he is obliged to make good the $100. The confessor absolves him from so doing in consideration of the fact that neither switchman nor station master had fulfilled their duty of inspection. Did the confessor decide rightly?

Answer. The confessor's decision is not correct in all points.

1. The reasoning by which he denies the obligation of restitution is erroneous. Supposing the switchman had neglected his duty of inspection (whether such was really the case can only be ascertained from the interval of time between Audax's mischievous deed and the train's arrival) he is the *negative* cause of the damage, answerable to the railroad company for it, because it was a neglect of his official duty and he has to bear the consequences. But Audax at all events is the cause of the harm done, and at that the *positive* cause, and the positive doer of damage is bound to make restitution before the negative doer, if otherwise the conditions which require restitution prevail (LEHMKUHL, Theol. No. I, n. 1016; S. ALPH. lib. 3, n. 573).

2. If Audax would become known, and be accused, as the perpetrator, there is no doubt but that he would be sentenced to pay damages and these would also bind in conscience. For this there

is necessary, besides causing the damage, only the legal guilt and this is undoubtedly present (LEHMKUHL, Theol. Mor. I, n. 965).

3. If the matter is merely to be decided in the interior *forum,* it must be ascertained that there was *culpa gravis theologica,* not only against justice *graviter culpabilis,* but to an extent also the anticipation of ensuing damage. Of itself Audax's deed is a grievously sinful act; it might well have happened that the displacing of the switches had resulted not only in the demolishing of two cars, but in a much more serious accident, perhaps with loss of human life. It would be therefore proper to ask Audax if he had not thought of the possibility of such a calamity. If admitting he had such thought, he would have to be held to make restitution, even if he had carelessly persuaded himself that just then a disaster would hardly occur. Should he earnestly assert that he had not thought of the possibility of a calamity, and that he expected the switchman would immediately come around, and, furious about the displaced switches, set them in order—a possible train of thought for an easy going boy—he could not then be held in conscience to make restitution. There might be a *culpa gravis* against charity in exasperating one's neighbor so maliciously (this is not examined here), but there is here no *gravis culpa* with regard to causing serious damage. That in this case the switchman had to bear the damage is unfortunate, but not unjust.

AUG. LEHMKUHL, S.J.

XLI. THE AGE FOR CONFIRMATION

Every baptized person, not yet confirmed, may receive Confirmation. For this reason Confirmation may be administered even to young children who have not yet arrived at the years of discretion. As a fact this Sacrament was formerly administered immediately after Baptism. According to present discipline, however, the Church does not allow it to be administered to children before the completion of the seventh year, and not until the attained use of reason. Man is to receive the fulness of Christian life, through the imparting of the Holy Spirit, at an age when capable of leading a Christian life. Confirmation may, however, even now, be administered earlier: 1. When there is a lawful custom of earlier reception, as is the case in Greece and Spain (where children are confirmed at the age of two or three years); 2. When the bishop by reason of great extent of his diocese, or for other important reasons, can but seldom confirm; 3. Where danger exists that a child might die before Confirmation and the bishop wishes to go and confirm him.

In many parts it has become customary that children are confirmed only after making their first Holy Communion. What Leo XIII thought about this custom is plain from his letter to the Bishop of Marseilles, who had abandoned the former custom and confirmed children before their first Holy Communion. In his letter Leo XIII expressly approves of the bishop's procedure and says of the existing custom: *Ea nec cum veteri congruebat constantique Ecclesiae instituto nec cum fidelium utilitalibus.*

There lie dormant in the heart of the child the germs of most varied desires, which may bring about man's undoing, if not early

weeded out. From earliest youth the grace and assistance of the Holy Spirit are required to this end. The Holy Father sees a two-fold advantage in early Confirmation: The childish mind is made more receptive for acquiring the Christian rules of life, it will be better prepared for the Holy Communion later to be received, and will obtain therefrom greater fruits: *Porro sic confirmati adolescentuti ad capienda praecepta molliores fiunt, suscipiendaeque postmodum Eucharistiae aptiores, atque ex suscepta uberiora capiunt emolumenta.* The matter is one for the bishops to regulate for their respective dioceses.

Fr. Goepfert, D.D.

XLII. RESTITUTION, ON ACCOUNT OF THE PURCHASE OF STOLEN GOODS

Anastasia, saleswoman in her sister Lucia's store, buys provisions which their vender, a housekeeper, has secretly taken out of her allowance, as she considers herself entitled to them through her economy in the management of the household, and also to improve her wages, which she considers insufficient. Anastasia purchases these things, partly not to expose this person in the presence of others, and partly because her sister has told her she may safely do so, and that the responsibility for the truth of the assertion rested with the housekeeper.

Is this proper, or is there in regard to the injury done to the housekeeper's employer the obligation of restitution, and in what order?

Answer. 1. The housekeeper can not be considered justified in appropriating anything over the agreed wages, under the pretext of compensation. To make such a thing permissible it would have to be proved that the person had been *forced* to work for unfairly low wages. This is not to be supposed in our case. The pretext of economical saving may be regarded more leniently, if in *reality* the articles ordinarily used in the household were supplied at a saving.

2. The purchase, on part of Anastasia and Lucia, is of articles which at least are very doubtful property of the vender; that a great part of these wares are the property of another, therefore stolen, is morally certain. Consequently their purchase is unlawful; nor does it become lawful because Anastasia hesitates to expose the vender; she can and must refuse the deal, and in order to talk this over with the housekeeper alone this person may be asked to wait until all other customers have left.

3. As there is acquisition of very doubtful, even positively unrighteous, property, the obligation of restitution prevails. As concerns the order, the housekeeper is liable in the first place; she must refund to her employer the value received, or, in case the articles were sold below their value, the *actual* value of all things to which she had no certain claim; in regard to the balance between the real value and the price received, she is entitled to reimbursement from Lucia's cash drawer, which profited by this difference in price. In the second place, if, namely, the housekeeper can not, or will not, make restitution, Anastasia and Lucia are liable for the loss which the employer has suffered. The entire loss must be refunded if the injustice of the appropriation is positively ascertained; if the injustice remains in doubt, the restitution may be reduced to a part, say one-half. Finally, it may be asked whether Anastasia is obliged before Lucia, or Lucia before Anastasia. As Lucia approved of Anastasia's action and Anastasia bought only in Lucia's name, the obligation of restitution falls first of all upon Lucia. Should Anastasia make restitution she would, in case the housekeeper could not be made to reimburse her, be entitled to recover the money from Lucia; both, however, Anastasia as well as Lucia, are entitled to reimbursement by the housekeeper for the money paid to her.

August Lehmkuhl, S.J.

XLIII. CO-OPERATION BY THE FURNISHING OF NON-CATHOLIC CHURCHES

A firm manufacturing stained glass, owned by a Catholic, received a handsome order from a Protestant community. The head of the firm asks Father A. whether he can properly and with a clear conscience undertake the commission.

Father A. forbids this, absolutely, as it would be assisting in building a temple for heretics. Subsequently Father B. is asked, who at once permits the firm to do the work.

Who is right? What justification is there for obeying one and not the other?

If Fathers A. and B. gave their decision without further inquiry into the status of the case, they both erred. We will explain this more fully. What is here really concerned? A Protestant house of worship is in need of stained glass windows; if the house were intended for profane purpose there would be no difficulty whatsoever. But the windows are to adorn a place where will be held worship the participation in which is forbidden by the Church, consequently a co-operation in something prohibited, a *cooperatio ad rem malam*, can not be denied. In the *cooperatio*, however, the first question is, can it be designated as formal? If so, there can be no permission, because it would be an actual participation in the sinfulness of the act, therefore a sin; if not formal, then it is material, and the act of the co-operation is neither bad of itself nor of its intention, it would solely become wrong through the guilt of the performer. That is sufficient, however, to render such co-operation unpermissible. The law of charity requires us to prevent evil as much as possible, primarily, therefore, not to assist in it in any way at all. The obliga-

tions of charity, however—we must not overlook this—exalted as they are, do not oblige us in general under great sacrifices, *i. e.,* for sufficient reasons to suffer evil to be done is not sinful. Hence the principle that a material co-operation is permissible for comparatively grave reasons. In material co-operation the question of the importance of the motives for the action are of great import. The more sinful the act, the greater the injury, the worse the scandal—on the one hand; on the other hand the more closely the material co-operation is connected with the act, the more necessary the co-operation for its accomplishment—then the more weighty must be the reason that is to render such material assistance permissible.

Let us apply this principle to the case before us. It is here a question of material support of a heretical sect; therefore the greatest good, the faith, is at stake. If by refusal of assistance the faith could be preserved, or a real injury to it averted, then our duty is clearly defined. Such would be the case if a new sect was being founded, or if a sect newly entered a locality theretofore free from all heresy. Hence the great severity of the rescript of the Cardinal Vicar of July 12, 1878.

If, however, a sect is tolerated to prevent greater evil, and officially recognized by temporal authorities, the case is a little different. The danger to the faith has become chronic, not so burning; the scandal has become lessened by conventionalism, though unfortunately not without spreading indifference in matters of faith. For the Catholic there remains the duty of abstaining from material co-operation, especially one directly connected with the promotion of heresy, as, for instance, contributing money to build heretic churches, contributing, or helping, at bazaars for the same purpose, etc. Architects must not make plans for such churches, nor erect the building, unless a more important reason exists than the gain itself. Fre-

quently, however, it will be best not to say anything about this, and not to disturb the good faith that has arisen from long existing practise. The decoration of churches appears to be less intimately connected with the prohibited worship than the building of the church itself. For this reason the furnishing of stained glass work might more easily be permitted; yet there should be a weightier reason than the ordinary gain, for instance actual lack of work which threatens the business, or which necessitates the discharge of workmen, who then would only with difficulty obtain other positions, and similar reasons, such as great improvement of the firm. If such reasons exist, and the locality in question is one of mixed religions, if there is no scandal to fear, or if it may be removed by explanation, the firm may undertake the work. The pictures must of course not bear even a trace of heresy.

W. Stentrup, S.J.

XLIV. THE EXTENT OF OBEDIENTIA CANONICA

In certain circumstances the solemn promise of ecclesiastical obedience is demanded. Such promise is, in first place, by precept, made and confirmed by oath to the Pope. The cardinals take this oath of loyalty to the Pope upon their elevation to the cardinalate; the archbishops before their investure with the pallium; this oath of loyalty forms part of the ceremonies at the consecration of bishops and abbots; it is contained in the Tridentine confession of the faith, and hence is required of all who, according to ecclesiastical precept, must make the Tridentine confession of faith. In the latter the formula is: *Romano Pontifici, beati Petri Apostolorum principis successori ac Jesu Christi vicario veram obedientiam spondeo ac juro.*

Besides this oath of loyalty to the Pope, there is at the consecration of priests a simple promise of obedience (not on oath) given by the newly ordained into the hands of the officiating bishop, to him, and his successors, if he is the diocesan bishop of the newly ordained, otherwise to the ordinary of the diocese to which the newly ordained will belong: *Promittis mihi et successoribus meis* (*Pontifici* or *Praelato Ordinario tuo pro tempore existenti*) *reverentiam et obedientiam. R. Promitto.*

Only after this solemn promise has been given, the kiss of peace is imparted to the ordained, and the latter receives full recognition as lawful priest of the Catholic Church.

What new obligations are assumed by this oath, and by this promise? That some new obligation is assumed can hardly be doubted. The oath taken binds the conscience with a new moral bond, at least that of the *religio,* so that disobedience is not merely

disobedience but perjury as well, and related to sacrilege. The simple promise of the newly ordained priest, though not possessing the same rigor of obligation, must still be viewed, even though in lesser degree, as a *vinculum religionis,* or as a ratification of the *vinculum* created by the ordination, as the solemn elevation to the most sublime state is on the part of the Church only consummated and approved after the deliverance of this promise. Though a new bond of obligation is therefore forged, the question follows: is there a new obligation? This can, in a certain sense, be affirmed, but also just as correctly denied. An obligation ensues to something new, inasmuch as with that promise of subjection a new office is undertaken; hence there ensue new obligations of office and state of life, especially new obligations of duty toward the higher ecclesiastical superiors. But these obligations already exist independently of the oath rendered or the promise made: they are not created by the latter, only confirmed and emphasized.

In matter and extent the obligation of canonical obedience is, on the one hand, measured by the office and the state, in the assumption of which the vow of obedience and submission is rendered; on the other hand the power to impose commands and to require obedience is measured by the official position of the one to whom the vow is made.

Wernz, in his *Jus Decretalium,* Vol. 2, n. 192, says correctly that, "The promise of obedience or the oath of loyalty extends for clerics only to lawful and *ecclesiastical* matters, especially to those specially expressed in the formula of the oath, and thereby bishop or clerics in no wise become vassals, or political subjects, of the Pope." Special matters are referred to in the bishop's oath; not in the oath in the Tridentine confession of faith. In this therefore, the affirmation by oath has reference only to the universal relation of

submission of the Catholic Christian to the ecclesiastical precepts of the Papal See.

In regard to the priestly promise, WERNZ, *loc. cit.*, explains: *"Obedientia canonica, quam clericus et beneficiatus suo Episcopo praestare tenetur, generatim in hoc consistit, ut ipsius legibus et praeceptis, sententiis et correptionibus, doctrinis et monitis prompte obsecundet. Inter alia vigore promissae obedientiae canonicae praesertim etiam illud exigitur, ut clericus licentia sui Episcopi in aliam diocesim non discedat, derelicto servitio Ecclesiae, cui in ordinatione addictus fuerat.—Quare licentia ab Episcopo in forma legitima est danda et absque justa causa denegari nequit.—Episcopus clericum dioecesanum qui certo loco non est adscriptus, invitum retinere non potest, ne a sua dioecesi discedat et alibi parochiam accipiat; quod si illum propter necessitatem omnino in diocesi retinere vel ad illam revocare velit, il facere non prohibetur, dummodo eidem de congrua provideat."*

The first and chief duty of canonical obedience is, then, not to abandon of one's own accord the assumed office, nor to break arbitrarily the relation to the diocese.

Then follows, as second obligation, the duty to obey, in the charge undertaken, the ecclesiastical instructions of the bishop, and to obey, still more zealously, the related higher regulations. Such higher regulations are contained, for instance, in the constitution of Leo XIII on prohibited books, and printing. Apart from par. 22, which commends a general precept specially to the clergy, par. 42 is particularly addressed to priests: *"Viri e clero saeculari nec libros quidem, qui de artibus scientiisque mere naturalibus tractant, inconsultis suis Ordinariis publicent, ut obsequentis animi erga illos exemplum praebeant.—Iidem prohibentur, quominus, absque Ordinariorum venia, diaria vel folia periodica moderanda suscipiant."*

The last sentence touches, therefore, a third instance, *i. e.,* non-ecclesiastical matters, in regard to which priests may owe submission and obedience to their bishop. But we see that this is a fact only in a very restricted extent. In this sentence there is reference to things which prejudice in a high degree the fulfilling of the obligations of office and state, or which endanger the reputation of the priest or the priestly state. That in such matters the bishop may exert power is evident; that such conditions be prevented is probably the reason for the general precept. Where, therefore, conditions or reasons prevail, like those which occasioned the papal precept, the bishop may act by power of his authority, and demand the priest's obedience. In other non-ecclesiastical matters this will hardly be the fact: except where matters are concerned which also otherwise are shown to be prohibited or to be required; to an exact fulfilment of duty, in all matters, the bishop must without doubt hold his clergy in a special manner, as they should set a good example to the rest of the faithful, always and everywhere, by spotless conduct and faithful fulfilment of duty. Without question the episcopal authority remains therefore quite within the privileges of its office when it, in kindred and not necessarily ecclesiastical matters, without actual command imparts admonitions and directions, in order to prevent faulty steps, or to warn against faulty actions and ways of acting, which might give scandal, or may be unedifying.

AUG. LEHMKUHL, S.J.

XLV. PILFERINGS OF PROVISIONS—A CASE OF RESTITUTION

Caius, who for thirty years has staid away from the Sacraments, resolves on the occasion of a mission to go to confession. To the question why he had not been to confession so long, he gave the following answer: "I was employed in a large provision house which belonged to a rich Hebrew. Like all others there employed I took home provisions, such as flour, sugar, coffee, etc., without the knowledge, and, of course, against the will, of the employer. This has been going on for thirty years. Had I gone to confession I should have had to stop these pilferings, and so could not have cared for my household as abundantly as before. Now, however, I have been pensioned and do not need the help any longer, and therefore I come to confession."

The missionary asks: "Is Caius obliged to make restitution? or are there excusing circumstances, as, for instance, great and to an extent unjustly acquired wealth of the employer; or the thought of additional compensation in view of unsufficient wages? Such excuses were not, however, present in the man's mind, he was conscious of committing theft."

To the first question, is Caius obliged to restitution, we must reply with an unconditional yes. In our case both conditions which create the obligation of restitution are present. For thirty years he has committed one theft after another, and thus caused his employer injury which it is his duty to make good. Even if the individual pilferings were not serious in themselves, yet his intention, as also the aggregate of the matter, puts beyond question the seriousness of the injury and of the guilt. The other condition, unjust acquisition of

another's property, is also present. For Caius possesses all the stolen goods in *acquivalenti, i. e.,* in his property. During all these years he was enabled to lay aside that part of his salary which otherwise would have been employed in purchasing provisions, or he has used it for the good of his household, and thus has enriched himself at the expense of his employer. The surplus gained in this manner he can not call his own, it is the fruit of his pilferings and ought not to remain in his hands.

But the missionary asks, further, whether there are mitigating circumstances. Let us keep in mind the penitent's confession: Caius was conscious of stealing. His only excuse is that the others did likewise. This, however, can not make an unjust act a just one, unless possibly the silent consent of the employer may be supposed. But he did not approve; the thefts took place without the knowledge, and against the will, of the owner, as Caius himself avows.

Could not the idea of secret compensation excuse? Of course Caius had no such idea; but that would make no difference. For if some one has been wronged there remains for him the claim for compensation, until he has received it, or voluntarily renounced it. But let us not forget that he who would thus secretly compensate himself, apart from other conditions, must be morally certain of the justice of his demands. Is this so with Caius? In the *casus* nothing points to an insufficient salary, indeed the pension granted by his former employer would demonstrate his liberality. To take refuge in a presumable condonation by the employer appears likewise to be excluded, as the proprietors of large commercial establishments are little inclined to such leniency.

To the missionary, in his proper desire to assist his penitent as much as possible, the idea occurs that the Hebrew had for the greater part unjustly acquired his wealth. Is this certain? And

even if it is: the flour, sugar, etc., belonged to the Hebrew and therefore he is injured in his property. But let us suppose—and Caius probably can throw light upon this subject—dishonest transactions have taken place. Then the next question is, how is Caius concerned? Either he positively co-operated or he did not. In the former case he is obliged to restitution to the defrauded; in order, of course, after the employer in whose name he acted. Nevertheless this would open a way which at least will materially facilitate the performance of restitution. For Caius must make restitution to the injured, but has the right to claim indemnification from the Hebrew. Let him therefore give the unjustly acquired property to those that were cheated. The latter are, however, numerous and to a great extent unknown; besides, most of them were probably not seriously injured and therefore Caius in his difficulty may let the poor take their place. The confessor accordingly should impose upon Caius the obligation to give alms as generously as his circumstances permit; thus restitution will be made gradually as far as possible. If Caius has not positively co-operated in frauds, but knew positively of the injustice that took place, then he may regard the victims as creditors of his former employer and return to them that of which they were deprived in the manner above described, with the reasonable presumption that the employer had no intention of restitution.

W. Stentrup, S.J.

XLVI. A CASE OF RESTITUTION

A workingman, named Caius, went one evening with some companions for a walk in the outskirts of the city. Suddenly he was set upon by an exasperated enemy, Gracchus, who had been lying in wait for him, and who threw him from the roadway down into the ditch. The violent fall from considerable height might have caused serious injuries, even fatal ones; as a matter of fact, however, Caius was not hurt. Nevertheless he pretended to be injured, and had his friends carry him home. Subsequently he brought suit for assault, in consequence of which Gracchus was sentenced to a term in prison, also to pay Caius damages to the amount of fifty dollars; furthermore Gracchus had to pay costs, and suffered in consequence of his imprisonment a lapse in wages, so that his financial loss amounted in all to about one hundred dollars. Caius wishes to know whether he must make restitution to Gracchus.

Answer. 1. Caius by his false accusations against Gracchus has formally violated justice, and is therefore obliged to restitution, for he biased the court, and the measure of punishment, in an effective manner, as the nature of the complaint is the basis upon which jury and judge find according to law. For this reason, presuming the law and the court are just, sentence and punishment in their moral justification depend entirely upon the complaint. If this is false and unjust, so are sentence and punishment. This is plain and therefore Caius can not be exonerated on account of lack of intention. Indeed we may safely say: he intentionally misstated the complaint so that Gracchus' punishment might be heavier; for *nemo gratis mendax.* Hence it is immaterial for our case what particular motive induced him to lie in court, whether hatred, greed, or what else. All con-

ditions are therefore present that constitute the obligation of restitution in the forum of morals, namely an *iniusta actio, quae est causa damni per se efficax et theologice culpabilis.* Caius for this reason is obliged to restitution, and he alone, provided the court was fair, as may be presumed.

2. The question is then, to what extent is he to make restitution? To the extent of the difference, the increase, caused by the false complaint. For it was Caius' right to sue, though the charge was properly not that of corporal injury, but that of an attempted crime, which would not have included indemnification for Caius in the sentence, as only actual injury, not the attempt at it, entitles to such. For this reason Caius must, first of all, make restitution of the fifty dollars. As regards the rest: costs and loss of wages, we may suppose that the delinquent would also have been condemned to pay costs to about the same sum, had the complaint been according to facts, while the term of imprisonment would have been shorter. Strictly speaking, therefore, Caius has to refund what money value corresponds to the increase of the imprisonment due to the false charge. On the other hand, he may now, when it comes to the consideration of restitution, compensate himself for all the disagreeable vexation which the affair has occasioned him without his fault. Both matters in their moral valuation might be considered as about equivalent and so there would be little or nothing of the one hundred dollars remain for restitution to Gracchus. As a matter of fact, a hundred dollars is not too heavy a fine for an offense that might have easily caused serious injury, even death.

ALB. KRAPOLL, S.J.

XLVII. ABSOLUTION OF A DYING PERSON IN THE STATE OF UNCONSCIOUSNESS

In the conferences held in *Coetu s. Pauli ad s. Apollinarem* at Rome, experienced theologians submit solutions of pastoral cases. The following is a case which P. MAURUS M. KAISER, O. Praed., presented and solved:

Father Titus was at dinner with his assistant, Father Caius, when the sexton rushed in and announced that some man had been dangerously wounded by another, who then turned the weapon against himself and attempted suicide; both were near death. The two priests hastened at once to the side of the dying, the pastor attending the aggressor, and the assistant the victim. When they returned the curate remarked: "I was just in time; the poor fellow, although quite unconscious, still lived, and thus I was enabled to give him absolution." "That was quite useless," answered the parish priest. "And, moreover, this murdered youth was overtaken by the judgment of God; he has lived in sin, given great scandal, and staid away from the Sacraments. As regards the murderer I did not give him absosolution, although bystanders told me that before my arrival he had indicated, by winking his eyes, that he desired something. But the Sacrament of Penance can not be effective without the acts of the penitent; these are the matter of this Sacrament, just as water is the matter in Baptism. If, therefore, contrite confession is absent, then the *absolutio,* the *forma Sacramenti,* can not be applied." Whereupon Caius doubtfully shakes his head.

Quæstions.—I. May a dying person, who is unconscious and gives no sign of contrition, be absolved?

II. Which of the two priests acted correctly?

III. What is to be thought of the reason with which the pastor sought to justify his action?

Resp. ad. I. We may distinguish two cases. If it is a dying person who no longer is able to give the priest a sign of contrition, but who has given such signs to those present before the priest's arrival, then it is, as BILLUART states (De Poenit, Diss. 6 a 10, para. 7): *"Communis et certa sententia in variis Conciliis et locis Juris definita, talem moribundum esse absolvendum, saltem conditionate et iuxta plurium opinionem valde probabilem potius absolute."*

In this case there is, therefore, no difficulty. But if the dying person has neither before nor after the priest's arrival given a sign of contrition, then the case is more difficult. ST. ALPHONSUS (Theol. Mor. 1, 6, 428) mentions two opinions. Some authors, he states, naming Busenbaum, Lugo, Suarez, Roncaglia, Laymann, are of opinion that absolution can not be given, and he adds: *Ratio brevis sed valde urgens est, quia tunc deest materia sacramenti, quae debet esse sensibilis.* Nevertheless he himself agrees with the *sententia communior* which asserts one can and should give absolution *conditionate* to such dying person, if this person has lived a Christian life. BILLUART likewise defends this opinion, "although several great theologians oppose it." The reason that ST. ALPHONSUS gives for this opinion is that the Sacraments were instituted on man's account, and that, therefore, in cases of extreme necessity, one may administer them even if the matter is doubtful: *"Necessitas efficit, ut licite possit ministrari sacramentum sub conditione in quocunque dubio; per conditionem enim satis praepeditur iniuria sacramenti et eodem tempore satis consulitur saluti proximi.*

But is the reason given for the first opinion, namely: The absolution can not be given *"quia diest materia sacramenti, quae debet esse sensibilis,"* not a good one? The *Materia Proxima* of the Sacrament

of Penance are the *actus poenitentis—contritio et confessio*—and surely if these acts are not perceivable in any way, nor may be presumed in any way at all, then absolution can not be given. This is plain if, according to the opinion of St. Thomas, we suppose the *actus poenitentis* as *materia ex qua.* But even if, with Scotus, we consider this *actus* only as *materia circa quam,* or as *conditio sine qua non,* the proposition is not different. For if the condition is in no wise fulfilled, nor can be presumed in any way as having been fulfilled, then absolution can not be given.

The question, therefore, is whether there is still present in such dying person, in some way or other, the *materia sensibilis sacramenti,* or at least may be presumed to be present. St. Alphonsus gives this splendid answer: *"Quod eo casu bene adest prudens dubium, quod moribundus vel ante destitutionem noverit suae damnationis periculum vel post destitutionem ad illud advertat in aliquo lucido intervallo, in quo praesumitur velle et petere absolutionem signis vere sensibilibus, nempe per suspiria, motus corporis, saltem per anxiam respirationem, quamvis tunc ista signa Confessarius non percipiat (scl. ut signa certa); sufficient enim talia signa in tanta necessitate saltem ex prudenti dubio praesumta ad dandam absolutionem sub conditione."*

This holy teacher is of the opinion, therefore, that it may be supposed that the afflicted, either before becoming unconscious, or in lucid moments that broke unconsciousness, had aroused inward contrition, and in some way or other (by sighs) desired to give exterior signs of his desire for absolution; at least the opposite is not established. This supposition, though weakly supported, suffices for granting absolution *conditionatim.* As Billuart explains, this procedure is justified not merely in the case of a dying person who has led a truly Christian life, but with all who have simply, by word or

deed, professed their Christian faith; indeed, as St. Alphonsus himself adds, even with those who have been stricken *in actu peccati, i. e., duelli, adulterii.* Hence to such a dying Catholic can only *then* not be given absolution: *"Quando nulla ratione dispositus praesumi potest et praesertim, quando post vitam absque fide transactam, antequam sensibus destitueretur, sacerdotem ad se accedentem contumeliose reiecit";* or, briefly expressed, *"de cujus indispositione et impoenitentia constat."*

Resp. ad. II. The answer is obvious from the preceding argument: Caius acted correctly, but he should have granted absolution *sub conditione,* which does not appear from his statement of the case. It was wrong on part of Titus to refuse absolution altogether. For even if this unfortunate man came to his state *in actu peccati,* he could still have been absolved *sub conditione,* all the more so because the dying man perhaps actually through winking his eyes tried to make understood his desire for absolution.

Resp. ad. III. It is true that according to St. Thomas the *actus poenitentis* form the *materia* of the Sacrament of Penance, and for this reason are as necessary for the administration of this Sacrament as water is for Baptism. But as, in extreme cases of need, one may employ a liquid for Baptism of which it may only be presumed *cum tenui aliqua probabilitate* that it is natural water, thus absolution may be given even if it can only be presumed *cum tenui aliqua probabilitate* that the dying man shows contrition. It corresponds perfectly with the benignity of our Mother, the Catholic Church, if theologians teach that one may suppose the dying person desires, through sighs, tearful eyes, etc., to express his contrition; it is possible at any rate, and the contrary is not established. Of course, the *materia* is *valde dubia,* but it is sufficient in such a case to grant absolution conditionally.

We should like to add the following remarks: For the practical procedure with dying who no longer can give intelligible signs, there exists no difficulty. The priest can safely adhere to the opinions of moralists, who, at the present time at least, unanimously maintain the principles above stated. According to this, every Catholic deprived of his senses, and near death, may be given absolution, at least *sub conditione,* indeed even if in *actu peccati* he became unconscious. The exception only is the dying person, *de cuius indispositione constat;* this would be particularly the case, as moralists hold, if the afflicted in question, just before he was deprived of his senses, refused to have a priest. Should, however, such a person—according to LEHMKUHL (II, n. 575)—in any way, for instance through pressure of the hand, imploring look, or some other sign, even though these be of doubtful nature, manifest a change of mind, then he may be absolved conditionally. One may indeed go even further: Even if this unhappy person had refused to see a priest and was then deprived of his senses, it is not improbable that an inward change of disposition takes place within him and that he desires to manifest the same; the case is similar to one in which some one becomes unconscious *in actu (alterius) peccati v. c. duelli;* although it is always more difficult to presume a change of disposition with those who just previously have rejected grace, still it is not an impossibility. BALLERINI *states* (Compendium Th. M. II, n. 505a): *"Quod absolvi non debeat nec possit, qui nulla ratione dispositus censeri potest, diffitebitur nemo. Verum cum dispositio praesumi possit vel in eo, qui sensibus destituitur in ipso peccandi actu, vix apparet, quandonam futurum sit, ut nullo modo moribundus possit attritus praesumi."* If then, for instance, a sick man to-day refuses the priest, and the following day the priest finds him unconscious, the priest should not be censured if he should give (perhaps secretly)

absolution *sub conditione,* after reciting the respective acts, though he discovers no actual signs of a change in disposition.

While the practical procedure offers no difficulties, yet, considered theologically, the matter is not so simple. If one adheres to the view of St. Thomas, now held as *communis sententia:* that the *actus poenitentis* are *materia proxima* of this Sacrament, there must, in order to warrant absolution, manifest itself, besides the interior contrition, also exterior contrition and accusation *aliquo modo,* so that a *materia sensibilis Sacramenti* be present; at the very least one must be able to presume *aliqua ratione* this *materia sensibilis* to be present. The interior *dispositio,* so theologians teach, may be presumed, in consideration of the mercy of God, and for the outward *manifestatio* according to St. Alphonsus the *anxia respiratio, suspiria, ictus oculorum,* etc., may be accepted. We may content ourselves with this, although I am under the impression many will not be convinced. For it may happen that a dying person lies there unconscious, quietly breathing; shall I refuse him absolution for lack of *suspiria,* etc.? Certainly not. There the opinion of St. Alphonsus does not entirely satisfy. I decidedly prefer to agree with other theologians who justify in another way the permission of absolution in such cases. They say a man who has lived a Christian life, or at least has remained a member of the true Church, seems thereby to have satisfactorily manifested exteriorly his intention to die as a member of this Church, intending consequently to receive the last Sacraments. This *manifestatio non expresse revocata* suffices to enable his receiving absolution conditionally. Even the refusal to see the priest is not always identical with a renunciation of the Church; *ergo:* in the case where the priest has been refused, the argument of St. Alphonsus is more favorable. Those who favor the other argument must—as Lehmkuhl actually does—in order to

be consistent, require such dying person to manifest exteriorly in some way his change of disposition. As, however, for this even doubtful signs suffice, *i. e., pressio manuum, oculorum obtutus* (LEHMKUHL), there is after all hardly a difference.

The demand that in order to warrant absolution the *actus poenitentis* must manifest themselves exteriorly, or that at least their *manifestatio* may be presumed in some way, applies at all events, if, after the *sententia communis,* we consider the *actus poenitentis* as *materia Sacramenti*—the *materia* indeed must be *sensibilis.* It appears to me that the matter would be different if, with the Scotists, we view the *actus* not as *materia ex qua,* but only as *conditio sine qua non,* or as *necessaria dispositio ad sacramentum, "quae,"* as BALLERINI adds (l. c., n. 506 C), *"non necessario debet esse sensibilis."* In order that the *absolutio* be valid the *dispositio* must be present, and in order that I may administer *absolutio* (*licite*) this *dispositio* in general must show itself outwardly. But in an extreme case the Sacrament is effective, if only the *absolutio* is given and the interior contrition and desire to confess are present. After the *sententia communis,* on the contrary, the Sacrament is not effective, when the *actus poenitentis qua materia sensibilis* does not show itself outwardly.

In order, therefore, to be able to give absolution to a dying person bereft of consciousness, I must, after the *sententia communis,* not only presume the *interna dispositio,* but also its *externa manifestatio;* after the *sententia* SCOTI the *praesumtio internae dispositionis* suffices. That the latter is easier is quite evident, and for this reason I agree with BALLERINI (l. c., n. 506 C), who, to the question which opinion would better justify the granting of absolution in our case, repiles: *aegre forte quis palmam primae* (S. THOMAS *vel communi*)

sententiae tribuet. BALLERINI refers here to the argument of those who presume the *anxia respiratio,* etc., as *materia sensibilis.*

I am aware that the otherwise ever reliable LEHMKUHL takes the other view, and even expressly states (Th. M., II, n. 512) that also according to the opinion of the Scotists, the *externa manifestatio* be considered *pro essentiali conditione sacramenti validi.*

If therefore we differ from LEHMKUHL we do not wish to consider our argument as conclusively decisive, but hope that it may perhaps induce a more thorough discussion and solution of the question.

IGNAZ RIEDER, D.D.

XLVIII. BAPTISM OF ILLEGITIMATE CHILDREN

Antonia, unmarried, has had several children and another one is just born to her. Respectable persons in her neighborhood abhor her dissolute life, and only with great difficulty could sponsors be found for previous children. On that account she bids the father of the new born child: "We shall not bother about sponsors, for you may go along as such." This the father did and he became sponsor. Subsequently this couple married, in another church; no one had any suspicion of spiritual relationship. A few weeks after the marriage the pair appear before the priest who baptized the last child to have it legitimized.

A glance at the baptismal register informs the priest of the whole situation; he inquires about the spiritual relationship and finds that no dispensation has been obtained; the marriage, therefore, is null and void. The convalidation of the marriage was not difficult, and took place in accordance with the rules; nothing further need be said about it here. The case is submitted only to suggest caution in baptizing illegitimate children, and to inquire whether some precautions should not be employed in Baptisms of this kind, in order to prevent such contingencies; also whether, by omission of some ceremonies, such parents at the Baptism of their children should be impressed with the Church's detestation of their sin.

The ecclesiastical law does not prescribe precautionary measures nor omission of ceremonies. The Church gives the priest a free hand in these matters. But I am of opinion it would not be against the spirit of Canon Law, which imposes irregularity on the illegitimate birth, if the priest, with due prudence, determines upon some disci-

plinary measures within lawful bounds. The moral sentiment of the community would certainly thereby be benefited.

In many localities only a woman may become sponsor at the Baptism of illegitimate children. This would exclude the occurrence of a case like ours. This usage is not contrary to the Tridentine, which is satisfied with one sponsor. In some parishes illegitimate children—urgent cases excepted—must be brought in the evening for Baptism. In cities and manufacturing centers it may be difficult to carry out such measures, but in country parishes they can be carried out, and have frequently been carried out—as priests have told me—with good success.

Alois Pachinger, D.D.

XLIX. PASTORAL PRUDENCE

About this virtue, so necessary in our difficult times, there can not be too much said or written. Needless to say, pastoral prudence consists in the priest's capability and skill to view circumstances and conditions objectively, and to employ the means at his disposal that in all he does or avoids to do, especially in difficult and delicate cases, he promotes and achieves the aims of his office.

The sentence of Holy Scripture: *"Initium sapientiae timor Domini"* (P. 110, 9) finds full application upon pastoral prudence. It points out one of the fundamental conditions without which there can be no genuine pastoral prudence. For holy fear is interior reverence, pious deference to God and respect of His holy Will, and it leads to conscientiousness, to a blamelessly moral, even perfect, life. Only a morally irreproachable priest can possess pastoral prudence; the more perfect his virtue, the more will his prudence increase. Of the opposite, Holy Writ tells us: *"In animam malevolam non introibit sapientia, neque habitabit in corpore subdito peccatis"* (Sap. 1, 4). There belongs also to the priest's moral rectitude continuous study, as the fulfilment of a positive obligation of his state of life.

Where these fundamental conditions prevail, there also will the virtue of prudence find an agreeable abode in man, and will be bestowed if solicited.

The particular foundations of prudence are modesty and humility, its chief obstacles self-satisfaction and conceit. *Abscondisti a sapientibus et revelasti parvulis.* The modest and humble man will not jump at his first conclusions as the correct and infallible ones, he will distrust himself and use mature deliberation. Of this deliberation

St. Bernard writes: *"Prudens pastor omne opus suum trina quadam consideratione praeveniet. Primum quidem, an liceat, deinde, an deceat, postremo, an et expediat. Nam etsi constet in christiana utique philosophia, non decere, nisi quod licet non expedire, nisi quod decet et licet: non continuo tamen omne, quod licet, decere aut expedire consequens erit."* The modest and humble man will not content himself, in difficult and delicate cases, with his own deliberation; he will seek, and listen to, the views of others, their opinions and counsels. On this subject St. Bonaventure has this to say: (*De Sex alis*) "It is a great act of wisdom to accept advice readily, and to ask for it modestly. Thereby a superior attains a threefold advantage: he gains, first of all, a greater certainty—if others are of the same opinion—that he does not err; secondly, he is less liable to blame, if he does not succeed in what he has done after listening to the counsel of prudent and righteous men; thirdly, as reward for his humility he will receive a special enlightenment from God in order to avoid unforeseen obstacles and to find appropriate means. Furthermore those whose opinion or advice he has secured will support him, and will defend his course, whether or not it is attended by good results."

It is not absolutely necessary that he, whose opinion or advice we seek, should be specially distinguished in knowledge and experience. He who is not personally, or only slightly, interested in a matter often sees in it some circumstances that escape the one deeply concerned in the same. It will not be beneath the dignity of a learned and experienced parish priest, in difficult and delicate cases, or when introducing reforms, to ascertain his young curate's views. This will also tend toward the instruction of the younger priest; at any rate the superior will avoid the dissatisfaction of the curate, and avoid his expressing disapproval to parishioners, if the parish priest

makes changes in the pastorate which become known to the curate only as a *fait accompli,* especially if new duties for the curate are a result of the innovation.

CANON ANTHONY SKOCDOPOLE, D.D.

L. INVALID SPONSORSHIP

Maria, a Catholic girl, has had improper relations with Hermann, a Hebrew, which remained not without consequences. At the Baptism of her first child three members of her family were present, the elder brother in the capacity of sponsor. Some time after, Maria's family severed all connection with Maria, because she persisted in her resolve to marry the Hebrew Hermann. The latter accepted the Catholic faith in order to marry Maria. Soon after a second child was born to them without Maria's family knowing anything about it. As there was no sponsor at hand, Maria had her younger brother entered as sponsor, and afterward informed her elder brother of the fact, who, in turn, acquainted the younger brother of the honor that had befallen him. As there seemed nothing else to do the latter declared himself willing to assume the sponsorship, which his sister had imposed upon him without his knowledge or desire. Is this sponsorship valid *in facia ecclesiae?*

Answer. No. The sponsorship can of course take place *per procuratorem,* but the actual sponsor must be made aware of his appointment, give his consent thereto, appoint the proxy, or direct the appointment to take place through another; for the position of sponsor imposes certain obligations, the voluntary assumption of which requires a foreknowledge and assent as most necessary conditions. This is the self-evident teaching of all moralists; thus LEHMKUHL (Theol. Mor., II, n. 758): *Requisitur pro patrinis, ut valide fuerint patrini; igitur ut habuerint animum gerendi munus patrini.* GOEPFERT, in his Moral Theology, III, p. 52, declares: "In order that some one really be sponsor, and assume spiritual relationship, it is requisite that he or she should have the intention of undertaking the

sponsorship; hence it is not contracted in an *error in corpore,* if there is a mistake in the one baptized, or if some one has been appointed to be a sponsor against his knowledge or wish, and only afterward apprised of the fact. Esser holds: "It is permissible for the sponsor to have a proxy at the sacramental act; he must, however, have knowledge of his selection as sponsor, and have the intention of becoming sponsor; otherwise spiritual relationship does not exist."

Since the brother had not the least idea that he was named as sponsor, since, moreover, in consequence of the severed relations, not even his *consensus præsumptus* could be supposed, there can be no question of a valid sponsorship. The subsequent consent to the condition of things has no lawful effect as the sponsorship occurs *in ipso actu baptismi,* and at this moment also the consent must be present; a kind of *sanatio in radice per subsequentum consensum* is impossible, as the act of baptizing, to which the sponsorship is attached, no longer lasts; here may be applied the inversion of the axiom: *Infectum factum fieri nequit.*

J. Göllner, D.D.

LI. TELEPATHIC PHENOMENA

P. Lodiel, S.J., published, in the *Etudes des Pères Jesuites* (Oct. 5, 1900, p. 49), a very interesting treatise on telepathy. The author states first of all that in recent times telepathy has again received much attention, and refers for France to the *Annales des Sciences Psychiques,* for Italy to the *Civilta Cattolica,* for England to the *Proceedings of the Society for Psychical Research,* etc. The most important work on telepathy is that by Gurney, Myers and Rodmore (*Phantasms of the Living*), which appeared in London in 1890. Scholars of various philosophical and religious views are of the opinion that the phenomena recorded in this work, probed most thoroughly and confirmed by reliable witnesses, can not be doubted. Of the many phenomena there recorded we can, for lack of space, only quote a few.

In the year 1855 Captain Colt, whose brother Oliver took then part in the siege of Sebastopol, had the following apparition: "In the night of September 9," so Colt relates, "I was suddenly awakened, and beheld by the window of my room, quite close to my bed, my brother in a kneeling posture. I thought at first it was an illusion, caused perhaps by moonlight. But as I glanced at my brother again I saw that he was looking at me with a loving, yet sad and imploring expression in his eyes. Thereupon I arose and stepped to the window to investigate. I convinced myself that there was no trace of moonlight, on the contrary it was quite dark and rain lashed the windows. I turned around and had my brother again before me, looking sad and imploring help. I noticed then a wound in his right temple, whence blood flowed copiously. His face was pale as wax. It was a vision," says Mr. Colt, "which I shall never forget to the

end of my days." A fortnight later news came from the Crimea that in an assault Oliver Colt was struck by a bullet in the right temple; thirty-six hours after his fall he had been discovered among a heap of corpses, in a kneeling posture.

A similar occurrence was reported during the Mexican war. One morning the mother of a young officer was seen to weep bitterly. When asked the reason of her grief she said: "Alas! I am to lose my son. This morning, as I greeted his portrait, as was my daily custom, I saw that one of his eyes had been shot out and blood was streaming over his whole face." Soon after they were informed of this officer's death. He had fallen at the siege of Puebla, shot in the left eye, at the very time that his mother had had the apparition.

Still more remarkable is the following occurrence: Young Philip Weld was a pupil at St. Edmund's College, near Ware. He was a well behaved, good boy, and for this reason greatly beloved by his teachers and fellow students. On April 16, 1845, in vacation time, some of the boys went for a row on the Ware. Philip had finished a retreat and received Holy Communion that morning. He gladly joined those who made up the boating party. On the return trip of the boat Philip asked for an oar to do his share of the work, when a sudden turn of the boat threw him into the water, and all efforts to rescue him were in vain. Philip's corpse was carried back to the college. Dr. Cox, the rector, was inconsolable over the accident; he had loved the boy dearly and he thought of the anguish of the family at losing so beloved a son. He decided to go and break the sad news to the bereaved parents. The following morning he drove for this purpose over to their home at Southampton. As he neared the house the father came out to meet him. Dr. Cox alighted and was about to address him, when Mr. Weld anticipated him, saying: "It is useless to conceal anything from me, I know that my son Philip

is dead." "How is that possible?" asked the priest. "Last evening," replied Mr. Weld, "I went for a walk with my daughter Catharine. Suddenly I beheld my son, passing on the opposite side of the street in company with two persons, one of whom was garbed in black. My daughter saw him first. She exclaimed: 'Oh, father! did you ever see any one who so closely resembled our Philip?' 'Resembled Philip?' said I; 'why, it is Philip himself.' We crossed over toward the three men and I saw Philip happily smiling at the one dressed in black. As we came closer all three suddenly vanished. On my return to the house I said nothing to my wife about the apparition so as not to frighten her, but the following day I awaited with great anxiety the mail. To my great joy there was no letter for me and my fears began to be allayed. Then I saw you coming toward the house. Now I know that you have come to tell me of my dear son's death." One may imagine Dr. Cox's amazement! He asked Mr. Weld if he had ever before seen the man in black. "Never," replied Mr. Weld, "but his features are so impressed upon my mind that I should certainly recognize him, if I were to meet him again."

Dr. Cox then related the story of the sad event, which had occurred precisely at the hour in which the father and daughter had seen the vision. The remembrance of the glad smile of their loved one afforded them great consolation. Mr. Weld arranged for his son's funeral, and at the burial he closely examined the faces of the clergy; but none of them resembled the black figure of the vision. Four months later Mr. Weld went with his daughter to visit a brother who dwelt at some distance. Incidentally he called on the local clergyman. While waiting in the reception room he inspected the pictures on the walls. Suddenly he stopped before one of them —there was no name on it—and exclaimed: "This is the man who

was walking with Philip!" The priest, who now entered, said the picture was that of St. Stanislaus Kostka. Mr. Weld was deeply moved; he remembered his son's special devotion for St. Stanislaus; he thought also of how his late father had been a great benefactor of the Jesuits and hoped that the saints of that order would in a special manner protect his family.

It should be noted that both father and daughter asserted they had never before in their lives had visions or hallucinations; furthermore the apparition did not occur at night, not in a dream, but in bright day light, in a public street, to two different persons, thoroughly credible, at one and the same time.

In the year 1898 there took place in New York a double apparition, the same person showed himself in two different remote places, at the same hour. H. M., as is related, awoke suddenly one night and saw before him his brother (who lived at a distance). The latter greeted him and said: "I am dying; you are to dispose of my fortune in the following manner," then, having given full particulars of the disposition, the vision vanished. H. M. informed his wife of what happened. A few hours later a telegram was received announcing the death of the brother; it had occurred at the time of the vision. H. M. started out at once to carry out the wishes of the departed brother. On the way he meets another brother, from another town. He, too, had had the same vision, at the same hour and with the same details. Arrived at the place of death they were told that the departed shortly before his demise had, as if in delirium, conversed for some time with absent persons.

How are we to explain these and similar phenomena? Some seek to explain them as a morbid, nervous, hysterical condition. But the persons to whom these apparitions happened were in perfect health.

How can the sick, the dying, at such distances produce perfectly plain pictures, intelligible conversations?

Still less does the matter admit of explanation through hypnotism, suggestion, or magnetism. No one was near to influence the persons who have had these visions, and who could exert any such influence at such great distance? Nor has spiritism any explanation to offer. In all these cases no one asked for information, or did anything to obtain it, such as is done in spiritism; the information was offered unsolicited. Nor was there any medium to negotiate connection parties. Moreover the dead have not the gift of speech, and the Catholic Church rightly teaches that there is no natural connection between the dead and the living. For this reason she has at all times constantly discountenanced the summoning of departed to satisfy curiosity. Even ardent spiritists like Allan Kardec, Eliphaz, Levi, Alexandre Aksakoff, admit that the dispositions of summoned spirits often are treacherous and immoral, a fact which demonstrates a co-operation of evil spirits.

Others, like Mr. Cookes, who attempt to explain everything by matter, presume that from the human brain innumerable vibrations are propagated in all directions and that these vibrations bring about such visions. But, let us ask what healthy person has ever had the power to produce such visions? How could the sick and dying alone have it? And how is it that the vibrations just reach the concerned person and none other?

There must, therefore, be supposed something supernatural. Only thus the image of living persons and their conversations can be explained. What then is this supernatural element? In spiritism evil spirits without doubt participate; this is admitted even by spiritists themselves, as stated above. In telepathy this is not the case, as frequently something good, providential, sacred even, proceeds there-

from. We are confirmed in this view when we see in the Lives of the Saints that such visions occurred to them. Thus, for instance, in the life of St. Francis de Chantal we read that at the time when the Baron was dying, his sick father, many miles from the Baron's deathbed, beheld a number of fine looking youths leading his son into a distant country. The son approached the father, and touched him gently upon the shoulder, as if to take leave from him. The venerable old man said under tears: "My son is dead!" A servant, despatched to make inquiries, met the messenger bringing the news of the death. It was found that the son had died precisely at the moment when the vision appeared to the father.

At one time when St. Alphonsus Liguori was preaching in the small town of Arienzo, he suddenly interrupted his discourse and said to his congregation: "Let us pray an Our Father at the peaceful passing away of Bishop Lambertini of Caserta." A few days later news came that the bishop had died exactly at the time when St. Liguori interrupted his sermon.

In the process of beatification of St. Philip Neri various instances were vouched for by credible witnesses, that the saint had beheld friends and disciples ascending into heaven.

In the year 1570 forty Jesuits embarked at Lisbon to go to Brazil as missionaries. Near the Island of Patmos they were captured by Calvinistic pirates and cruelly put to death on account of their faith. At the same hour St. Theresa beheld forty martyrs with palms in their hands and surrounded with glory (among them was a cousin of hers) ascending to heaven. She mentioned this vision to several persons.

Similar visions are found in lives of many saints. The intention of God in them is probably the glorification of His faithful servants, the consoling of the bereaved and the strengthening of them in the

faith. These visions are incontestible proof that there is a higher immaterial world and that between the higher and the lesser world there exists relation, as even the English Society for Psychical Research is forced to admit. The materialists of our day would deny the existence of the soul after the death of the body. Telepathy offers facts which can not reasonably be doubted, and which not only prove that with death not everything is at an end, but even give us some information about the fate of souls after death.

J. Raef.

LII. THE JURISDICTION TO HEAR CONFESSIONS

Caius, an alumnus, is sent from his seminary to a parish not far away to assist on a feast day. It being Paschal time, Caius received from the bishop jurisdiction to hear confessions, but explicitly for this day only. Caius therefore heard confessions, held services and made ready to return to the seminary. But suddenly the parish priest is taken ill, and he asks the alumnus to remain another day, because on that day also will people come to confession. Caius objects that he has jurisdiction only for this one day, but the parish priest says: "I will give you jurisdiction. I have *iurisdictio ordinaria* and can therefore delegate you, the same as I could for assistance at marriage. Of course I can only delegate you for my parishioners, not for the diocese as the bishop can. You will have *potestas ordinis* through Holy Orders and *iurisdictio delegata* from me." This argument does not quite convince Caius, for if that were so, he thinks, for what purpose did the bishop restrict his jurisdiction just to this particular day? Yet, he satisfies his conscience by reasoning: This is a case of necessity, and if the bishop knew of it he would most certainly give me jurisdiction; I may then rightly presume the jurisdiction.

In the worst case—he reasons further—there prevails *error communis* so that the Church supplies the jurisdiction if absent. He remains, hears confessions the following day, and returns to his seminary.

Questions.—I. What is to be thought of the parish priest's argument, and what of the arguments of Caius?

II. Were the absolutions given by Caius valid or not?

In order that the absolution in the Sacrament of Penance should

be valid, there are necessary for the priest hearing confession, besides *potestas ordinis,* also *approbatio* and *iurisdictio.* The *approbatio* is the authoritative declaration that the priest in question is capable, scientifically and morally, of hearing confessions, the *iurisdictio* is here the bestowal of the faculty to render decisions *pro foro interno.*

That *approbatio* as well as *iurisdictio* are necessary is evident from the Tridentine (Sess. 14, cap. 7, and sess. 23 de ref. cap. 15), *iurisdictio* is necessary *iure divino, approbatio* however *iure ecclesiastico,* as the latter was first introduced by the Tridentine. Although frequently both are given to the priest *uno eodemque actu,* yet it is necessary in many cases that *approbatio* and *iurisdictio* should be precisely distinguished. Naturally approbation precedes jurisdiction, for only to the priest declared capable are assigned certain faithful as *subditi,* over whom he is to exercise jurisdiction. Presuming as known the terms *iurisdictio ordinaria* and *delegata* we will pass on to answer the questions.

Ad. I. The parish priest's argument is not valid. Of course he himself has *iurisdictio ordinaria* and can, if nothing prevents, delegate another priest, for instance to perform marriage. But for hearing confession there is not merely *iurisdictio* necessary, but also *approbatio,* and the latter *per Episcopum loci.*

Caius had received *approbatio* and *iurisdictio uno actu* from the bishop, but only for one day, for the second day both were lacking to him. The parish priest could not give jurisdiction to Caius because the approbation which the Tridentine requires was lacking. Previous to the Tridentine the matter would have been different. The matter is stated by Lehmkuhl (II, n. 371) as follows: *Quamquam ex natura rei quilibet, qui ordinariam potestatem habeat, eam alteri communicare potest; nihilominus suprema auctoritate ecclesiastica, a qua tandem omnis iurisdictionis exercitium atque valor pendet, ita*

constitutum est, ut nemo delegatam iurisdictionem in S. poenitentiae tribunali exercere possit—saltem quoad confessiones saecularium—nisi approbationem ab Episcopo (loci) acceperit. Quo factum est, ut delegatio ab iis, qui Episcopo inferiores sunt, data seu danda fere inutilis evaserit.

Since the *approbatio per Episcopum loci* is always necessary, a parish priest can not delegate a priest, who has approbation and jurisdiction in another diocese, to hear confessions. Exempt from this law are only the parish priests themselves (and *a fortiori* the bishops) in regard to their *subditi,* so that they can hear their parishioners' confessions also in another diocese without *approbatio per ordinarium loci,* because the Tridentine itself excepts from this law those in possession of a parish benefice.

Now let us pass to Caius' views. He believed he could with perfect right presume the *iurisdictio.* But—and this is taught unanimously—the *approbatio* and *iurisdictio* can not be presumed. For the validity of the absolution the Tridentine requires an *approbatio actu existens* and hence an *approbatio praesumta* suffices not at all, no matter how probable or certain it may seem that the bishop would grant it. *"Approbatio, quae ad validam confessionem requiritur, vere data (et confessario notificata) esse debet, non sufficit praesumptio approbationis dandae"* (Lehmkuhl, II, n. 384, 4). If a priest therefore desires an extension of his jurisdiction from the bishop, he must not, no matter how certain it may be that the bishop will grant the extension, hear confessions before receiving positive information (written or by reliable messenger) that the jurisdiction has been prolonged.

Perhaps in Caius' favor is his last argument, that there is an *error communis* and that therefore the Church supplies the defect. The question is, when does the Church supply the lacking jurisdic-

tion? Theologians give a unanimous answer to this: *Ecclesia supplet, si adest titulus coloratus et error communis,* but both must be present at the same time. The *titulus coloratus* is present if, though the exterior act through which jurisdiction is bestowed, has taken place, it is invalid on account of a secret fault, for instance if exteriorly a parish were quite lawfully assigned to a priest, but the entire act were invalid on account of secret simony. If the jurisdiction has not been given at all, or if, though given validly, it has already expired, yet the people suppose the priest has jurisdiction, then there is present *titulus putativus,* together with *error communis.* It is plain that in our case Caius had no *titulus coloratus,* but only *putativus, i. e.,* there is present therefore *error communis sine titulo colorato.*

For this case the theologians hold: *Si adest putativus et error communis, non est certum, an Ecclesia suppleat.* LEHMKUHL writes thus: *"Si sine titulo colorato solum error communis adest, multi quidem putant Ecclesiam propter commune bonum, cui potissimum publica auctoritas provideat, etiamtum supplere; et quum nullam legem ecclesiasticam habeamus, quae id fieri statuat, neque consensus Doctorum adsit, totum dubium manet."*

Ad. II. From the aforesaid there follows the answer to the second question and this answer is: It is not quite certain that the absolutions given by Caius on the second day were valid. For, although SABETTI, S.J., says (Compendium Theol. Mor., n. 773): *"Probabiliter etiam supplet Ecclesia, si adsit error communis sine titulo colorato, sed cum titulo tantum existimato (= putativo). Eadem enim urget ratio ac in casu praecedente, cum etiam in hac hypothesi innumerae animae perire possint. Ita multi et graves theologi apud S. Alphonsum,* n. 572; and although A. ESCHBACH (Anal. Eccl., 1897, p. 505) writes: *"Jam vero sententia probabilior*

tenet, Ecclesiam supplere, si error adsit communis etiam sine titulo colorato. Caeteroquin in materia sumus favorabili in qua ampliatio datur," by all this we do not get beyond the *probabilitas,* and where a Sacrament is concerned, *probabilitas* is of little use to us (extreme cases of necessity excepted), what we need is *certitudo.*

What is to be said of Caius' action? Objectively he has committed a grievous fault. It is not even allowed to hear confessions, though *titulus coloratus* and *error communis* are present and the Church therefore surely supplies the defect, when one knows he has no jurisdiction, but only a *titulus coloratus.* Even more unlawful is it if only *error communis* is present, when it is not certain that the Church supplements. *"A fortiori non licet illi, qui omni potestate eiusque titulo se destitutum novit, propter solum errorem communem agere, tum quia usurpat potestatem, quam non habet; tum quia eos, quorum interest ipsius actum validum esse, periculo atque damno exponit"* (LEHMKUHL). To what extent Caius was at fault subjectively, we are unable to determine, but it must be admitted that he took the matter too lightly.

The claim will hardly be made that there was a *probabilitas* of valid absolutions, and that *cum iurisdictione probabili* one could lawfully absolve. The answer to this would be: In our case there was not only *iurisdictio probabilis* absent but there was *nulla iurisdictio,* probable it is only that the Church supplied the defect.

Finally, the question suggests itself, what was to be done after Caius discovered his error? Were the people to be informed that they were only apparently absolved, and that they were obliged to procure certain absolution? This question is by BERARDI (*Praxis Confess.,* n. 1053, IX) answered thus: "There exists no obligation in general to compel the faithful to repeat confessions made *bona fide"; and* in support BERARDI *refers* to the decision by the *Congr. Concilii,*

of December 11, 1683. The matter is to be left at rest; in the worst case the faithful will have these sins indirectly remitted in their next confession. It would be different if the faithful themselves found out that these confessions were of doubtful validity. Some theologians are of the opinion that even in this case the faithful need not be required to repeat their confessions, but the decision quoted by Berardi says: *Si ipsi confessi hoc resciverint vel ed de invaliditate confessionis dubitaverint, eosdem teneri reiterare confessionem.*

Ignaz Rieder, D.D.

LIII. A MUSICIAN'S CO-OPERATION BY PLAYING IN PROTESTANT CHURCHES AND AT DANCES

In a small town there is an orchestra of which Torquatus is a member. He is a man with family and obtains his sole income from this profession, making a fairly good living. He is often called upon to play at Protestant funerals, also at dances—not infrequently immodest dances. The leader of the orchestra declares that Torquatus must play at all engagements or be dismissed. Torquatus, a conscientious Catholic, asks his confessor what to do under these circumstances. What answer should be given him?

If Torquatus can find other employment, by which he can support his family respectably, he should be advised, without doubt, to quit the orchestra. If this is not possible, then the question is whether the situation excuses him in co-operating, in the manner mentioned, at Protestant funerals and at dances. The twofold danger, of injuring his own soul and of giving scandal to others and co-operating in their sins, appears to prohibit him from so doing.

As regards the actual danger it should not be difficult for a conscientious father of a family to render this danger very remote, especially by purity of intention and by vigilance and prayer.

His participation in an act of non-Catholic worship, and in the sins of others on the dance floor, appears to be more important. For this reason these two points may receive closer attention.

1. As regards playing at Protestant funerals, a distinction must be made as to whether the co-operation must be regarded as formal, or merely as material. Such participation is formal if it forms part of the forbidden ritual, or if it is part of the same, as for instance playing the organ, or singing at non-Catholic services. In such cases

the participation can not be excused for any necessity whatever, because it is essentially wrong. In this sense moralists prohibit Catholics from singing, making responses, or playing the organ at non-Catholic services (Compare MARC, n. 433 (2); LEHMKUHL, n. 656).

If the orchestra, of which Torquatus is a member, plays funeral marches, etc., at Protestant funerals, the same as at other purely profane occasions, this co-operation can as little be considered as formal participation as that of mourners accompanying a funeral; both could be considered only material participation, for this reason taking part in a Protestant funeral procession is allowed for just reasons, for example as an act of civic decency. *"Funus deducere usque ad fores templi vel coemeterii censetur civile obsequium* (MARC, n. 432, 2). And (LEHMKUHL, n. 656, 2), permits *"Instrumentorum musicorum concentus inter ritum quidem religiosum, sed non ut ejus pars vel ornamentum, sed e. g. in honorem principis acatholici praesentis."*

2. The second question is whether Torquatus' musical co-operation at dances—not infrequently immoral dances—is not formal co-operation, and as such positively forbidden. *"Co-operatio formalis ad peccatum alterius semper intrinsice mala est, atque ideo numquam licita"* (AERTNYS, I, II, n. 77). The same authority says: *"Co-operatio formalis est vel ex fine operis ex fine operantis"* (n. 76). The latter is evidently not the case with Torquatus, who certainly does not intend the sins of others. As regards the *finis operis* the rule is: *"Co-operatio est formalis, quae concurrit ad malam voluntatem alterius praestando operam, quae suapte natura ad malum ordinata est vel pars illius est."* It would be difficult to establish that the playing of a musical instrument, even in the rendering of an immodest piece, is to be considered as an act *quae suapte natura ad*

malum ordinata vel pars illius est. It would be quite another matter with the singing of shameful songs.

Even if we admit that the co-operation of Torquatus is merely material and therefore in case of need not in itself prohibited, yet it appears that his co-operation at such dances is a grave scandal to all who learn of it, this so much the more as he is looked upon as a righteous man. This aspect is not to be overlooked, and for this reason Torquatus is obliged without doubt to prevent, as far as possible, such scandal by making known in his circles that he only unwillingly and under pressure of circumstances plays at Protestant funerals and at questionable dances. If he does this then he is hardly obliged, for fear of giving scandal, to quit the orchestra, "*cum charitas, vi cujus scandalum tollere deberet, non obliget cum tanto incommodo*" (AERTNYS, n. 317).

Although in the interests of morality it were greatly to be desired that hall keepers, and others, who arrange dances and amusements dangerous to morals, were unable to find musicians and dancers, yet we must not impose this as duty upon an individual as in the case of Torquatus, when the principles of morals do not appear to compel under such great difficulties.

P. JOHN SCHWIENBACHER, C.SS.R.

LIV. FORGETTING TO GIVE ABSOLUTION

Caius was called to a dying person to administer the last Sacraments. He heard the dying man's confession, gave him Holy Communion, Extreme Unction and general absolution. Only after returning home did it occur to him that he had forgotten to give sacramental absolution. Again he went to the sick man, made with him an act of contrition and, without saying anything to him about absolution, pronounced the words of sacramental absolution over him.

Did Caius act correctly? Or rather let us ask: 1. Was Caius bound to return and absolve the dying man?

2. Was the absolution by Caius valid, although more than an hour had elapsed between confession and absolution?

3. Should Caius not have informed the sick man that he was now absolving him, in order to make the absolution valid?

The answer to all these questions is simple and requires only a brief argument.

1. The duty of absolving the dying validly, is based upon two reasons, firstly, to make sure, as far as possible, the eternal salvation of the dying; and, secondly, because according to divine law the sins of baptized, where possible, must be subjected to the power of the keys.

This subjection has its final in the sacramental absolution; the divine law therefore has not found its accomplishment when the penitent has confessed his sins, but then only when the priest has absolved the confessed sins by direct exercise of the power of the keys. The fulfilling of this divine command is particularly urgent in danger of death; for this reason then the duty of the sinner to

confess, and the duty of the priest to absolve, become most important.

In our case the penitent had fulfilled his part; the confessor through an oversight had not fulfilled his. Undoubtedly he must repair the defect unless he be excused by an important reason. If only the priest's duty is considered, the question whether the time it will take to return may be a sufficient reason for an excuse must depend upon the distance, and also upon the fact whether other pressing business would be delayed by returning to the patient. The reason for an excuse in this direction need not be a very weighty one.

Of more weight will have to be the ground for excuse if solicitude for the greater safety of the sick man's salvation comes into consideration. Should the least doubt arise as to this safety, the defect, although unintentional, must be rectified even at the cost of considerable inconvenience. The question is then, do Holy Communion and Extreme Unction offer sufficient certainty?

With regard to Holy Communion its effect to sanctify those who, without their fault in the state of sin, receive it with previous attrition, is probable but not certain. Caius therefore can not excuse failure to return to the dying man with the fact of having administered the Holy Eucharist. In regard to Extreme Unction its effect is morally certain (Compare the author's Theol. Mor., II, n. 568). As, however, some authors raise doubt even regarding this Sacrament, then these doubts, even if very feeble, are sufficient reason in Caius' case to decide upon bestowing the absolution, especially in the case of a dying man, when the maxim should apply: *Nulla sat magna securitas, ubi periclitatur aeternitas.*

2. That an interval of one hour elapsed between confession and absolution does not make the latter invalid. The relation of matter and form is to be determined variously according to the nature of the different Sacraments. Just as in profane courts accusation, trial

and sentence do not necessarily take place in one session, neither is this necessary in the tribunal of penance; although a long interval—as lawful in the former—would not always be without danger in the latter case. St. Alphonsus, referring to the opinion that absolution is valid even an hour after confession, says (lib. 6, n. 9): *"Videtur accepta esse apud omnes."*

3. The words just quoted refer to the absolution administered to the penitent without further advice or act; there was even greater certainty since Caius again awakened contrition with the dying man.

As far as the connection between matter and form of the Sacrament is concerned, all doubt as to its validity is precluded. Doubt of its validity could only arise in the event that perhaps the penitent meanwhile had committed a grievous sin. In that case of course another confession and a new conscious intention must enter for the reception of absolution. But in our case we may regard this supposition as excluded, because the probability is that the sick man would have accused himself of it. Nevertheless Caius would have done well to admonish the patient that he was about to absolve him. (No need to mention his previous forgetfulness.) There is nothing unusual about a repeated absolution of the dying. As, however, it is a matter of the actual reception of the Sacrament, it is always appropriate that the recipient *actu* be aware of it, when he will receive it with greater devotion, and consequently with greater fruits, unless there are weighty reasons against. Caius hardly committed a fault in not observing this method, yet it would have been better, if feasible, to make the sick man aware that absolution was being given.

Aug. Lehmkuhl, S.J.

LV. SIMPLE VOWS AND RESERVED CASES

At a gathering of regular clergy the point was argued: *"an simpliciter professi incurrant casus in Ordine reservatos?"* As no generally satisfactory answer was given I will essay to present a few data which may contribute toward elucidation and solution of this question. To set aside all doubt as to who is included in the term *simpliciter professi* I would preface my remarks with the following quotation: *"Pius IX. per Encyclicas Litteras de die* 19 *Martii,* 1857, *s. Congregationis super statu Regularium de Votorum simplicium professione, incipientes 'Neminem latet' statuit atque decrevit, ut in religiosis virorum familiis in quibus vota solemnia emittuntur, peracta probatione et novitiatu ad praescriptum S. Concilii Tridentini, Constitutionum Apostol.,* etc. *Novitii vota simplicia emitterent postquam expleverint aetatem annorum sexdecim, etc. . . . Professi post triennium a die, quo vota simplicia emiserint, computandum, si digni reperiantur, ad professionem votorum solemnium admittantur"* (Bizzarri, *Collectanea in usum Secretariae s. Congr. Episc. et Regul.,* p. 854).

In these *Litterae Encycl.* there is only mention, therefore, of *simpliciter professi* who, in regular orders for men with solemn vows, take after their novitiate the simple vows *ad triennium.*

The solution of our question appears to depend chiefly upon the fact whether these *simpliciter professi vere et proprie* are to be regarded as *religiosi,* and whether they are consequently bound to all obligations and duties of the same, unless special privileges or dispensations in the rules of that order permit of mitigation or exception.

This matter is dealt with by Bizzarri (*apud Piatum Monten-*

sem; Praelectiones Juris Regularis, tom. I, ed. II, p. 9) as follows: *"In generali conventu diei* 15 *Junii,* 1856, *penes s. Congregationem super Statu Regularium disputatum est, an qui in Ordinibus religiosis votorum solemnium praemittere debent professionem votorum simplicium declarandi essent vere Religiosi vel tantum participes privilegiorum? Nonnulli ex Emis Patribus primam partem propositionis probandam esse existimabant, quia ageabtur de votis simplicibus perpetuis ex parte voventis, utpote quae tendunt ad emittenda deinde vota solemnia, in quibus perfectionem et complementum accipient, prout locum habet in Societate Jesu. Alii vero autumabant, communicationem tantum privilegiorum esse concedendam, cum non expediat privilegium singulare Societatis Jesu ad alios Ordines extendere, ne novus Status Religionis contra vigentem Ecclesiae disciplinam generaliter constituatur. In hac sententiarium disparitate SSmus D. N. Pius IX sequentem probavit articulum, qui in declarationibus a memorata S. Congregatione datis sub n. VI Legitur: Professi dictorum votorum simplicium participes erunt omnium gratiarum et privilegiorum, quibus professi votorum solemnium in memorato Ordine legitime utuntur, fruuntur et gaudent."*

Upon this article of Pius IX Petrus a Monsano, in his *Collectio Indulgentiarum, theologice canonice ac historice digesta,* p. 580, comments correctly: *"Nec ipsi alumni, qui in Ordinibus religiosis professionem votorum simplicium per triennium praemittere debent, declarati sunt veri religiosi, licet participes facti sint omnium gratiarum, quibus professi votorum solemnium gaudent."*

This opinion gains weight, and is confirmed, by the declarations of the *S. Congr. Super Statu Regul.,* and by the views of the authors of the law of regulars, from which it is evident that on the one hand (A) there are not conceded to the *simpliciter professi* certain rights and faculties of the *solemniter professi,* or that special rules apply

for the same in regard to certain functions, as for instance in the *Dispositio in temporalibus,* etc.; and that, on the other hand, (B) they are exempted from certain duties or penalties of the *solemniter professi:*

A. (a) *Bona defuncti religiosi, qui tantum vota simplicia emisit, ad suos haeredes spectare, sive ab intestato, sive ex testamento venientes, declaravit s. Congregatio Episc. et Regul., die* 6 *Jun.,* 1836.

(b) The *solemniter professi vi temporalis vel perpetui indulti saecularizati* are usually subjected to various clauses and conditions (Piatus M., tom. I, p. 175), whereas *dimissi cum votis simplicibus ab omni vinculo et obligatione liberi sunt* (Bouix I, 516). *Quod in dubium est, si agatur de iis, qui in Ordinibus vere religiosis per triennium manere debent in votis simplicibus* (decl. s. Congr., d. 12 Jun., 1858).

(c) *Superiores Regulares hujusmodi professis concedere possunt litteras dimissoriales, sed ad primam Tonsuram "dumtaxat" et Ordines minores servatis de jure servandis* (decl. s. Congr., 12 Jun., 1858).

(d) *Non possunt simpliciter professi titulo paupertatis ad Ordines sacros promoveri* (S. Congr., 12 Jan., 1860).

(e) *In actu receptionis ad votorum solemnium professionem simpliciter professi non habent suffragium* (decl. s. Congr., die 7 Febr., 1862).

(f) *Simpliciter professi excluduntur a ferendo suffragio pro admissione ad professionem votorum simplicium juxta declarationem s. Congr., de die* 1 *Sept.,* 1875.

(g) *Neque licite neque valide simpliciter professi eligi possunt tanquam Praelati vel Superiores in eodem Ordine* (decl. die 16 Jan., 1891).

(h) *Ad quaestionem, an voto simplici paupertatis ligati de suis*

bonis valide disponant absque licentia Superioris, respondet Piatus M.: sententia communior affirmat; peccant quidem graviter contra votum ita agendo; nihilominus capaces sunt transferendi dominium; nullibi, enim hujusmodi incapacitatem statuit ecclesia.

(*Ita etiam apud eundem auctorem;* Suar., Sanch., Lugo, Schmalz, Ferraris.)

B. (a) *Simpliciter professi tenentur choro interesse, licet non teneantur ad privatam divini officii recitationem* (del. s. Congr. super statu Regul., 6 Aug., 1858).

(b) *Inter conditiones ad apostasiam proprie dictam requiritur ut recedens in religione proprie dicta a Sede Apostolica approbata vota substantialia emiserit. Unde qui recedit durante triennio votorum simplicium, non est verus apostata, quia nondum vota substantialia emisit* (apud Piatum M., p. 195, Suar., Sanch., Reiff.). *Ergo nec Excommunicationem aliasque poenas incurrit.*

(c) *Inter conditiones ad Excommunicationem latae sententiae nemini tamen reservatam ob habitus religiosi dimissionem incurrendam etiam habetur: ut habitus dimissio a religioso professo fiat, quia canones citati de religioso loquuntur. Porro in sensu stricto hoc nomine veniunt tantum religiosi vere professi* (Ita apud Piatum M., p. 302, Passerini (O. Pr.) Pellizarius, S.J., Rotario Barn).

(d) *Ad quaestionem, utrum fratres Laici Excommunicationem aliasque poenas incurrant, si mulieres in monasteria virorum introducunt:* respondet Piatus M., p. 360: *affirmandum est, si vota solemnia jam emiserint, cum sint veri religiosi; ergo non incurrerent has poenas cum votis simplicibus.*

If, and because, the *simpliciter professi* must not be regarded as *veri religiosi,* and for this reason are not partakers of various rights, faculties and privileges of the *solemniter professi;* if further they are not bound to all the duties and obligations of the *solemniter pro-*

fessi, not even incurring papal reservations, just because they are only *simpliciter,* and not *solemniter professi,* I think I am justified in drawing the conclusion: *Simpliciter professi non incurrunt casus in Ordine reservatos; agitur enim de lege poenali et odiosa quae est stricte interpretanda, adeoque iis solis, qui indubie religiosi sunt, applicanda.*

P. Antonius, O. Fr. M.

LVI. ADMISSION TO HOLY ORDERS

Placidus, spiritual director and confessor in a clerical seminary, became uneasy in mind at ordination time every year, as he does not know exactly whether or not he should admit certain doubtful candidates to Holy Orders; all the more he is embarrassed as there prevails in the diocese a great lack of priests. Recent moralists, like BERARDI, appear to favor leniency; earlier ones, however, demand that doubtful candidates be rejected. The question is: What rule is to be followed in this regard?

Answer.—Doubtful may be considered in general all those candidates who have not discarded serious sinful habits, but have merely promised amendment. Of such habits may be mentioned especially *ebrietas* and *mollities.*

The longer a candidate remains under the circumspect guidance of a spiritual director, the better judgment can the latter form of the penitent's temperament: the formation of this judgment is particularly easy after an alumnus has spent three or four years in the seminary. He, who in the first years of his sojourn in the sanctuary of the Lord, far from the distracting clamor of the world and close to the source of grace, shows no signs of earnest purpose of amendment, of him can lasting amendment neither be expected after ordination; for he who honestly and sincerely makes use of the means of grace at his disposal, will assuredly become master of his passions before ordination. But he who employs them only indifferently, can not without presumption expect miraculous conversion from the Holy Sacrifice and the Holy Office. Grace and good will are the chief factors in the process of perfection. Where honest good will is wanting, there exterior graces avail little and only periodically.

An opinion is more difficult if the candidate came to the seminary from a life in the world, and within the space of a year must finally declare himself for the priesthood. In this case the terms *"rarius, bonae frugis, probitas"* are for the director the criterion.

(a) *Rarius.* Relapse into sin must not only become rarer, but very rare indeed, for St. Paul writes to his disciple Timothy, II, 22: *"Manus cito nemini imposueris, neque communicaveris peccatis alienis."* The Council of Trent, sess. 23, cap. 14, charges the bishops: *"Sciant Episcopi debere ad hos ordines assumi dignos dumtaxat et quorum probata vita senectus sit,"* and St. Thomas teaches that for the candidates for ordination *non sufficit bonitas qualiscunque, sed requiritur excellens.* For this reason P. Marc (p. 411) draws the conclusion: *"Hinc prohibet apostolus* (II Tim. III, 6) *ordinari neophytos, id est, ut explicat idem Angelicus, qui non solumi aetate neophyti sunt, sed et qui neophyti sunt in perfectione."*

God, in His wise providence, gives as a rule moral virtue not without effort and struggle on the part of the recipient, and this effort will be all the harder, and the struggle all the more violent, the more the opposite vice has taken posession of the sensual nature, and the deeper roots it has struck in the heart.

Like a river that has overflowed its banks, and lays waste the fields and meadows, can not be turned back into its bed by an easy turn of the hand, neither can the stream of passion, especially when it is a question of *occasio in esse*, securely be dammed merely by a simple act of will, and generally even after a sincere return to God some relapses are not unlikely, until virtue gradually has been fortified. Naturally, inconstancy, neglect in co-operating with grace, and inexperience in employing the means of grace, are the causes of such relapses.

(b) *Bonae frugis.* The candidate must show that he has labored at

the amendment of his life with fruit and profit, and that thus, in his new state in life, he gives promise of being useful to himself and others. He, who is himself not in the state of grace, who discharges the sacred functions therefore sacrilegiously, certainly will never contribute to the welfare of the Church, nor be a blessing to the souls entrusted to him. The Church does not of course demand that her clergy must have been previously perfect, and for admission to the cloister, as well as to the seminary, the principle of St. Bernard applies: *"Nos in monasteriis omnes recipimus spe meliorandi,"* but she demands to see in her prospective ministers visible progress in virtuous endeavor, and this all the more pronounced the nearer they approach the altar. Hence Benedict XIV, in his Bull *Ubi primum,* addresses the bishops thus: *"Studiosa et magna adhibita diligentia investigandum a nobis est, an eorum, qui priorum Ordinum susceperint ministeria, talis fuerit vivendi ratio et in sacris scientiis progressio, ut vere digni judicandi sint, quibus dicatur: 'Ascende superius' cum alioquin expediat in inferiori potius aliquos manere gradu, quam cum suo majori periculo et aliorum scandalo ad altiorem provehi."*

The Council of Trent expresses itself even more plainly (Sess. 23, cap. II) on individual ordinations, demanding from those in minor orders: *"Clerici ita de gradu in gradum ascendant, ut in eis cum aetate vitae meritum et doctrina major accrescat: quod et bonorum morum exemplum et assiduum in ecclesia ministerium atque major erga presbyteros et superiores ordines reverentia, et crebrior quam antea corporis Christi communio maxime comprobabunt";* of deacons and sub-deacons it expects (cap. 13): *"Subdiaconos et Diaconos ordinandos esse, habentes bonum testimonium et in minoribus Ordinibus jam probatos, qui sperant Deo auctore se continere posse,"* and of priests (cap. 14): *"Qui pie et fideliter in ministeriis anteactis se*

gesserint et ad Presbyteratus ordinem assumuntur, bonum habeant testimonium . . . atque ita pietate ac castis moribus conspicui sint, ut praeclarum bonorum operum exemplar et vitae monita ab eis possint exspectari."

(c) *Probitas.* Mere outward integrity and freedom from conspicuous exterior faults do not suffice; a life of probity is demanded, *probata vita,* as the Council of Trent says, alluding to the words of St. Paul: "*Diaconos similiter pudicos et hi autem probentur primum et sic ministrent nullum crimen habentes.*" Hence St. Alphonsus requires of candidates for the priesthood *probitatem habitualem,* and St. Bernard demands: "*In clero autem viros probatos deligi oportet, non probandos.*"

Although in regard to renunciation of temporal goods and submission of the will lesser claims are made upon secular priests than upon regulars, yet *in puncto puncti,* being in constant intercourse with the world, and having fewer means of grace, they are exposed to greater danger and in this they must be *fortiores.* Hence St. Alphonsus, and after him Scavini, require of an *ordinandus* a perfect abstemiousness of three months. Cardinal Goussey says: If a candidate has fallen once or twice, more from frailty than from design, and is much affected by his fall, then according to our opinion six months' probation are enough; generally, however, a year should be required, especially if the fall was of design. Other moralists, as Bertin, Bouvier, Leon. a Porto Maur., are still more exacting.

It should not be inferred from these opinions that the *probitas ordinandorum* is to be determined according to mathematical forms, by days and months, for the human heart is not a machine. One who has been on probation for a long while may again relapse, and a recently converted Paulus may hold his ground. We must never forget that even a promising servant of God may fall if he do not

combine continual vigilance with prayer and work, and that for us all the words are applicable: *qui stat videat ne cadat.* For a forceful, energetic character there may suffice a considerably shorter probation than for an indolent weakling, one who seeks the security and shelter of the sanctuary rather than the glory of God and the Church's welfare.

The apparently severe opinions of saintly teachers and theologians merely indicate that, in the all-important matter of election to the priesthood, probability is not sufficient, and by no means should a *mercenarius* be given admission to the sanctuary just to remedy a lack of priests; a doubtful candidate should be rejected rather than approved; for there is no greater harm for the Church of God, no greater curse for the people, than unworthy, undutiful priests. Nor is there a more certain road to misery, in this and the other life, than the priestly state for those without vocation.

P. Agnellus, O. M. Cap.

LVII. ADMINISTRATION OF THE HOLY VIATICUM TO ONE UNCONSCIOUS FROM A PARALYTIC STROKE

The curate Lucius is called to Caius, who, nearly eighty years of age, and never before seriously ill in his life, had now suffered a stroke of paralysis. Lucius found him fully conscious, heard his confession and prepared to leave, not considering the man's condition critical. Only at the urgent request of the anxious wife, and at the patient's own solicitation, decided Lucius to give Caius Extreme Unction. Thereupon the patient asks for the Holy Viaticum, saying he felt his end approaching. Lucius hastened away to get the Viaticum. Meanwhile the daughter prayed with her father short acts of preparation for Holy Communion. Just before the priest returned with the Holy Viaticum Caius lost consciousness. Thus Lucius found him and waited a while for consciousness to return. But in vain. He was sorry not to be able to give the Viaticum to the unconscious man. He bestowed *absolutio in articulo mortis,* and bore the Holy Sacrament back again to the Church. Caius died shortly after, without regaining consciousness, and of course without the Viaticum. The question is, did Lucius act correctly in not giving the Viaticum to the unconscious man? Does unconsciousness of itself preclude the reception of the Holy Viaticum? To both questions the answer is briefly: No!

Now the argument. The actual reception of Holy Communion is necessary in general, *necessitate praecepti divini et ecclesiastice.* The divine Saviour expressly imposed actual reception, not merely upon the priests, but also upon the faithful. This is plainly evident from the Lord's words at the institution of the Holy Sacrament of

the Altar: *"Accipite et comedite . . . Hoc facite in meam commemorationem."* The Apostle (I Cor. ii, 23-27) confirms this beyond any doubt, by concluding the account of the institution of the most Holy Eucharist with the words: *"Quotiescumque enim manducabitis panem hunc et calicem bibetis; mortem Domini annunciabitis donec veniat."* The Council of Trent (sess. 13, cap. 2) confirms the divine command of actual reception as follows: *"Salvator noster, discessurus ex hoc mundo ad Patrem, sacramentum hoc instituit, in quo divitias divini sui erga homines amoris velut effudit, memoriam taciens mirabilium suorum; et in illius sumptione colere nos sui memoriam praecepit, suamque annuntiare mortem, donec ipse ad judicandum mundum veniat."*

St. Thomas Aquinas (3 qu., 80 a., II) refers, in further proof, also to the following words of the Lord (John 6, 54): *"Nisi manducaveritis carnem Filii hominis, et biberitis ejus sanguinem, non habebitis vitam in vobis."*

In the early centuries of Christianity the ardor of the faithful in the actual reception of Holy Communion was so great that the Church had no need of issuing a command in regard to it. This became necessary only when this ardor lessened. Since that time we have had many decrees of Popes and councils, by which the obligation of receiving Holy Communion is emphasized. For brevity's sake we refer only to the fourth Lateran Council, under Pope Innocent III (can. 21), and to the Council of Trent (sess. 13, can. 9).

The reception of Holy Communion is directed especially in danger of death. This duty follows from the very purpose for which Our Lord chiefly commanded the reception of Holy Communion. The Council of Trent, in reference to this, says: *"Sumi autem voluit sacramentum hoc, tamquam spiritualem animarium cibum, quo alantur et confortentur viventes vita illius, qui dixit: Qui manducat me,*

et ipse vivet propter me: et tamquam antidotum, quo liberemur a culpis quotidianis, et a peccatis mortalibus praeservemur. Pignus praeterea id esse voluit futurae nostrae gloriae, et perpetuae felicitatis, adeoque symbolum unius illius corporis, cujus ipse caput existit, cuique nos tamquam membra arctissima fidei, spei et charitatis connexione adstrictos esse voluit."

When, however, are we more in need of this spiritual food for the soul, this antidote against the poison of sin, this pledge of future glory and eternal bliss, as also of the most intimate union with Christ, our Head, as the living members of His mysterious Body, as when in danger of death, in that important moment upon which the whole of our eternity depends and when Satan once again employs all his cunning and power to plunge the soul into eternal ruin.

Hence St. Jerome (in Evang. St. Matt., c. 15) says with reference to the dangerously sick: *"Non vult eos Jesus dimittere jejunos, ne deficiant in via. Periclitatur ergo, qui sine coelesti Pane ad optatam mansionem pervenire festinat. Unde et Angelus loquitur ad Eliam: Surge et manduca, quia grandem viam ambulaturus es."*

Similarly the Council of Trent expresses itself (l. c. cap. 8): *"Panis ille supersubstantialis vere fidelibus christianis sit animae vita et perpetua sanitas mentis, cujus vigore confortati ex hujus miserae peregrinationis itinere ad coelestem patriam pervenire valeant, eundem Panem Angelorum quem modo sub sacris velaminibus edunt, absque ullo velamine manducaturi"* (Compare Cat. Rom., p. 2, c. 4, nn. 54, 70).

The ecclesiastical precept of the reception of the Holy Viaticum is expressed unmistakably also in the constant practise of Holy Church. It has always been her chief concern that none should depart this life without the Holy Viaticum. Innumerable instances from the Church's history bear witness to this constant concern of

the Church. St. Dyonisius of Alexandria gives an account (Euseb. Hist. Eccl., 1, 4, c. 44) of an aged man, named Serapion, who perished in the persecution. Before his death he sent for the priest so as to receive the Holy Viaticum. The priest himself was seriously sick and could not possibly journey the long distance. In order, however, not to let the sick man die without the Holy Viaticum, he entrusted it to the messenger. *"Exiguam Eucharistiae partem puero tradidit, jubens, ut aqua intinctam seni in os instillaret . . . Puer buccellam intinxit et in os senis infudit. Qui ea paulatim absorpta continuo animam exhalavit."*

St. Ambrose shortly before his death received the Holy Viaticum, as we are informed by Paulinus, his secretary. Furthermore many Popes and councils expressly ordained the administration of Holy Viaticum to those in grave illness. Thus the Popes Siricius, Innocent I, Sixtus III, Leo the Great, Gelasius I, Felix III, Gregory the Great, Gregory III. Of the councils we mention those of Nice, the fourth of Carthage, the third of Orleans, the seventh, eleventh and sixteenth of Toledo, the second of Aix La Chapelle. The Council of Trent directs: *"Deferri ipsam sacram Eucharistiam ad infirmos, et in hunc usum diligenter in ecclesiis conservari, praeterquam quod cum summa aequitate et ratione conjunctum est, tum multis in conciliis praeceptum invenitur et vetustissimo catholicae Ecclesia more est observatum. Quare sancta haec synodus retinendum omnino salutarem hunc et necessarium morem statuit"* (Compare Cat. Rom., p. 2).

St. Alphonsus Liguori teaches positively (Theol. Mor., l. 6, n. 290 q.): *"Sumptio Eucharistiae fidelibus adultis est necessaria necessitate non medii sed praecepti divini obligantis . . . in articulo mortis per modum viatici . . . Quisque fidelis in*

periculo vitae, quod praevidet vel merito timet v. gr. in gravi morbo . . . tenetur sub mortali communicare."

This holy father does not leave us in doubt either as to what must be understood by *articulus mortis.* He explains (H. Ap., tr. 15, nn. 19, 46): *"Quoad viaticum dicimus hic, quod quilibet fidelis tenetur illo muniri semper ac infirmus in probabili mortis periculo est constitutus, prout est qui graviter decumbit cum mortalibus signis . . . Potest suscipi Eucharistia a non jejuno, cum communio datur per viaticum in periculo mortis. Dictum est in periculo, quia ad recipiendum viaticum non est necesse nec laudabile exspectare tempus, quando nulla amplius spes vitae subest, sed sufficit ut adsit periculum probabile mortis."*

If then the reception of the Holy Viaticum is ordered and of obligation in danger of death, then naturally priests are also bound, under such circumstances, to administer Holy Viaticum.

But is there no exception from this rule? And is simple unconsciousness among the exceptions? *Only* those sick persons are excepted who can not receive the Holy Viaticum with becoming reverence. The *Rituale Romanum* warns: *"Diligenter curandum est, ne iis tribuatur viaticum, a quibus ob phrenesim, sive ob assiduam tussim aliumque similem morbum aliqua indecentia cum injuria tanti Sacramenti timeri potest."*

St. Thomas Aquinas gives to unconsciousness special mention. He makes a distinction between the so-called feeble minded and those deprived of all use of reason. He teaches that the Holy Eucharist is not to be refused to the feeble minded. Of the others he distinguishes such who never had the use of reason, and such to whom the use of reason was not always lacking. If the latter, while in command of their reason, showed devotion to the Most Blessed Sacrament, then it must be administered to them in danger of death.

if no irreverence is to be feared. *"Aliqui dicuntur non habere usum dupliciter: uno modo quia habent debilem usum rationis, sicut dicitur non videns qui male videt; et quia tales possunt aliquam devotionem hujus sacramenti concipere, non est eis hoc sacramentum denegandum. Alio modo dicuntur aliqui non habere totaliter usum rationis. Aut igitur nunquam habuerunt usum rationis, sed sic a nativitate permanserunt; et sic talibus non est hoc sacramentum exhibendum, quia in eis nullo modo praecessit hujus sacramenti devotio: aut non semper caruerunt usu rationis; et tunc, si prius, quando erant compotes suae mentis, apparuit in eis devotio hujus sacramenti, debet eis in articulo mortis hoc sacramentum exhiberi, nisi forte timeatur periculum vomitus vel exspuitionis." Unde in Concilio Carthaginiensi* IV (*can.* 76) *legitur: Is qui in infirmitate poenitentiam petit, si casu dum ad eum sacerdos invitatus venit, oppressus infirmitate obmutuerit, vel in phrenesim conversus fuerit, dent testimonium qui eum audierunt et accipiat poenitentiam; et si continuo creditur moriturus, reconcilietur per manus impositionem et infundatur ori ejus Eucharistia."*

St. Alphonsus in this entirely agrees with St. Thomas.

Our case must be judged on these principles. Caius, shortly before the priest's return with the blessed Sacrament, possessed the use of reason, and plainly showed his devotion to this Sacrament by urgently asking for the Holy Viaticum. In his case there was no danger of vomiting, etc., and no profanation of the Most Holy was to be feared, therefore. If Lucius did fear any such thing he should have simply made a trial with an unconsecrated Host, so as to remove all doubt in this respect. Unconsciousness of itself was certainly no reason for Lucius to leave the sick man without having satisfied his desire. A doubt as to the proper disposition for the reception of the Holy Viaticum could not at all exist in this case.

The genuinely Christian life led by Caius, a devout Catholic, was an additional guarantee in this respect. It is all the more to be regretted that Caius' ardent desire for the Holy Viaticum was not satisfied. Lucius should certainly hereafter proceed according to the views of our loving Mother, the Church, who is so solicitous for her dying children. The dying will thank him for it in eternity.

P. Jos. Á Leon, O. M. Cap.

LVIII. CONDITIONAL BAPTISMS

In a recent publication a priest gives his opinion upon the repetition *sub conditione,* of Baptisms administered, in cases of necessity, by lay persons, midwives particularly, and what the procedure should be in such cases. The theoretical principles are, briefly: the priest must inquire how the lay Baptism was administered when he will find one of three cases to be the fact:

(a) The Baptism was without doubt administered validly, and then he must not repeat it, but merely supply the ceremonies according to the ritual; or

(b) The Baptism was beyond doubt invalidly given, and then he certainly must baptize the child; or he finds

(c) Neither validity nor invalidity of the Baptism is certain, one is as doubtful as the other, and then he must re-baptize the child *sub-conditione: Si non es baptizatus.*

But what about the practise? For this the priest quoted gives two rules:

1. In any case it is not allowed to re-baptize, even *sub-conditione,* until after inquiry has been made about the validity of the Baptism given.

2. It is not necessary to make a thorough inquiry, if the midwife, physician, or other person, is known to the priest, and if from previous questioning he is sure of her or his correct administration of Baptism, a brief question will suffice then in order to shape his mode of action accordingly.

Will this mode of procedure always and everywhere be correct?

Above all, the inquiry *sub* 1 required will be superfluous in every case where the person is not a Catholic. In reference to this LEHM-

KUHL writes (Theol. Mor., II, p. 17): *"Pro America igitur plane puto, numquam haberi sufficientem certitudinem baptismi rite collati, nisi forte in singulari casu habeas testes catholicos fide omnino dignos. . . . Imo ita in dies magis crescit sive infidelitas, sive etiam apud bonae fidei acatholicos incuria, ut nunc idem dici debeat vix non ubique."*

Inquiries will be superfluous, furthermore, in the case of "madams" or other persons who are reliable neither religiously, morally nor personally, and their claim to have administered Baptism correctly need not be heeded. Such persons are likely to knowingly deny mistakes, in order not to be embarrassed before priests and sponsors. But even in the case of other persons not very well instructed, one can not depend upon even the most careful inquiries with the certainty required for the first and most necessary of the Sacraments. In almost every instance they will claim to be quite sure of having administered Baptism correctly, as it will appear to them impossible to make a mistake in such a simple thing as Baptism. All those *trifles,* however, that are sufficient to render Baptism uncertain, and to make necessary its repetition, that need the vigilance even of the trained priest, those are often fatal to lay-Baptisms. They escape the notice of lay persons and even by minute examination can not always be ascertained. It is somewhat of a task to ascertain from the average midwife (or physician, etc.) if she or he used natural water? If she made correct use of the correct formula? What of the intention, of corruptions of the baptismal formula, of leaving out words? Errors will easily occur in the hurried, or careless, administration of lay-Baptism, without attracting attention of the lay person administering the Sacrament, and without possibility of detection afterward. These "trifles" suffice, according to theologians, to allow Baptism to be repeated conditionally. Who, then, will find fault with

the priest who, in the case of the average midwife, or other lay person, only insufficiently instructed, omits all examination because he can not depend upon the answers, and without further ceremony re-baptizes conditionally to make sure that each infant shall validly receive Baptism? An exception is to be made, and Baptism need not be repeated, if correct lay-Baptism is attested by an eye and ear witness, whose knowledge and conscientiousness are a safe guarantee for his statement. But where is such *testis omni exceptione major* likely?

If the midwife, physician, or other lay person, is God-fearing, conscientious, and well instructed about the details of the administration of Baptism, about intention, matter and form, and application, if it be known, furthermore, that even under the most difficult circumstances this person gives lay-Baptism correctly, with composure and presence of mind, then the priest, as is said *sub 2* above, need not again and again put the same questions to this person, in every case of lay-Baptism administered by her, or him, only to receive the same answers. But even with such persons the *diligens examen* required by theologians has a purpose, *saltem, prout adjuncta ferant* (Lehmkuhl, Theol. Mor., II, p. 16).

One should particularly inquire whether it was a special case, whether there were extraordinary circumstances. If the priest then finds no special reason for conditional re-Baptism, he will omit it. But even with such well instructed, reliable persons, this should not become the rule. The omission of re-baptizing must rather be the rare exception. This is plainly prescribed by the Congreg. de Propag. F., dato September 8, 1869 (Lehmkuhl), that, namely, children baptized by lay catechists are not re-baptized *quibusdam "casibus exceptis," ubi fieri potest, ut nullum prorsus probabile dubium circa validitatem baptismi oriatur,* although these lay catechists

are examined at least once a year as to their reliability. In this matter applies the principle that "the Baptism should rather be repeated than not spent at all" (GOEPFERT).

Judged upon these principles those diocesan precepts that impose the obligation of invariable re-Baptism of children baptized by lay persons are fully justified. Circumstances, such as lack of instruction, indifferentism, etc., may prevail so generally, that notwithstanding the most searching inquiries there will in individual cases be reason for doubt, and hence for a repetition of Baptism. Such diocesan practise does not contradict dogma. It will always except individual cases in which the validity of lay-Baptism is proved beyond doubt. If, for instance, a priest has, in case of danger, provisionally baptized a newly born infant without the prescribed ceremonies, it would never occur to anyone, nor be required by any diocesan decree, that there must also be a conditional re-Baptism. The "priest baptizing," so Scherer says in his Manual of Canon Law, "is not obliged, according to present practise, to engage in any lengthy examination about the validity of a lay-Baptism, he may rather presume its invalidity. The assertion that such indiscriminate re-baptizing of lay-baptized children contracts irregularity is not supported by the law."

FR. NEUHOLD.

LIX. CONSECRATION OUTSIDE OF HOLY MASS

A priest is required to take the Viaticum to a dying person. For want of a consecrated Host, he takes an unconsecrated one, pronounces over it the words of consecration, with the intention of consecrating the Host, and gives it to the dying person. Is such consecration, in case of necessity, outside of Holy Mass, valid?

Yes, it is valid. To this question St. Alphonsus replies as follows: *Negat Lugo, quia, ut ait, ratio sacramenti nequit dividi a ratione sacrificii . . . ; alii vero communiter affirmant, quia in omni sacramento, semper ac minister formam profert super materia cum debita intentione, perficit sacramentum. Haec sententia est quidem valde probabilis, sed opposita non videtur improbabilis* (Th. Mor., L. VI., n. 196, Dub. 3).

Such procedure, however, is always grievously sinful. Lehmkuhl, in his Theol. Mor., II, n. 131, teaches: *Graviter peccat qui consecrat extra Missae celebrationem;* and Dr. Müller, in his Moral Theology, states (L. III, par. 92, n. 3): *Nec in necessitate quantumvis gravi, e. g., ut moribundo praebeatur viaticum, licitum est alteram tantum materiam consecrare.*

Adolph. Schmuckenschlager.

LX. AN UNBAPTIZED MARRIAGE CANDIDATE IN THE CONFESSIONAL

Livia, the religiously brought up daughter of a wealthy manufacturer, is about to marry Titus, who for several years has been bookkeeper in her father's office. The wedding is to be celebrated in the spirit of the Church; Livia and Titus are to receive Holy Communion at the Nuptial Mass. Two hours before the ceremony they both come to confession. Titus, who for some time has regularly received the Sacraments at Easter time, begs the priest, in his confession, for advice and assistance, confessing that he is an adventurer, having secured his position with the aid of forged papers, and that he is a Hebrew. In deference to the views prevailing in the home of his employer, and particularly out of consideration for the daughter of the house, he has pretended piety, even going to the Sacraments; he avows he had not unwillingly entered the confessional, as he had been comforted there and had recognized in the priest, bound in secrecy through the seal of confession, a sympathizing friend and a consoler for his greatly perturbed soul. He had even felt that, through his humble admission of errors, not only had his soul been comforted, but relieved from guilt through the absolving words of the minister of God. Now he had resolved to make this awful revelation, safe from all betrayal, hoping for assistance, advice, mercy! He, however, states his unalterable will: 1. That he will not desist under any circumstances from marrying Livia; 2. That although he is certainly not an irreligious man, he can have no faith in a personal God, in Christ, in dogmas. And now the priest shall say what is to be done.

1. May the priest impart this information to the bride or to her father? To this question we must reply a positive No!

Evidently no seal of confession exists here; Titus has never sought sacramental absolution. Yet perhaps a natural obligation to secrecy, a sort of official seal of secrecy, binds the priest. A revelation would also result in the most scandalous stories about revelations from the confessional, thereby bringing the Sacrament of Penance into ill repute, all the worse as Titus would not escape punishment by the law. Compared with this the great misfortune of the deceived bride and her family can not be taken into account. Every man has the natural right in the state of distress to seek counsel and consolation, and the Church imposes upon the one entrusted with this confidence the strictest silence.

To be sure in such a case the strict obligation of secrecy can not be viewed as absolutely certain. *Per se, ex natura secreti,* it follows not. *Propter scandalum evitandum,* therefore *per accidens* it might follow. S. Alph., Theol. Mor., Lib. 4, Tract 6, n. 971: *Potest manifestari secretum commissum, saltem sine peccato gravi: . . . ex justa causa, nempe si servare secretum vergeret in damnum commune vel alterius innocentis, vel etiam ipsius committentis; quia tunc ordo charitatis postulat, ut revelctur; unde etiamsi jurasses, tunc detegere posses. Ita communiter,* etc. If it can be hoped that a scandal arising from publishing the secret, namely the opinion that the seal of confession had been violated, may be removed by explanation, and that the people would accept such explanation, then the confessor would have to act as due consideration for averting the *damnum injustum* from Livia would suggest. If the confessor can not entertain this hope then he will *per accidens, propter scandalum horrendum, propter bonum commune,* namely the conservation of

confidence to the Holy Sacrament of Penance, be obliged to secrecy.

Of course the obligation of secrecy for the priest would be much plainer, if Titus had revealed his secret, in the form of a confession, only after long years of wedded life with Livia, after they had been blessed with children, then the revelation in a certain sense would no longer serve as *avertendum damnum,* but place Livia in a position which would actually mean a *damnum emergens* and deliver her, besides, to most serious qualms of conscience.

May the priest arrange for a *sanatio matrimonii in radice?* Even if this is possible from a dogmatic standpoint, the priest must not apply for it without Livia's knowledge; for Livia's consent is by no means to be presupposed. If Titus should be found out and be brought to court, Livia would perhaps find consolation in the fact of not actually being the wife of the adventurer and in having exclusive right to the children; it might eventually be her only compensation if some honorable man would then take this unfortunate woman for his wife.

Rudolf Hittmair, D.D.

LXI. AN CONSECRATUM SIT CIBORIUM EX OBLIVIONE EXTRA CORPORALE RELICTUM

This question has been discussed before * without arriving at a positive answer. It is important enough to deserve closer attention.

We will distinguish two cases. The consecrator *actu* sees, or has in mind, the Ciborium or the small Hosts, which, owing to oversight, are placed outside the corporal, or he does not think of them *actu,* but had thought of them previously.

1. In the first case, when he *actu* thinks of them, the Hosts are really consecrated, his intention covers them as well as the large Host. Nor can the objection be valid that a consecration joined to a grievous sin can not be presupposed of a priest. For 1. In *casu* the *intentio consecrandi* and the consecration of the matter outside of the corporal has actually taken place, and thus there can be no question of being only supposed *praesumptio enim cedit facto;* 2. The consecrator commits no sin at all, if he consecrates a matter *ex oblivione extra corporale relictam,* and consequently the objection is without foundation.

It should not be argued the priest has, or should have at least, the intention to commit no grievous *material* sin. Such an intention is inconceivable, for a material sin does not depend upon the intention, but solely upon the action. The intention can not prevent material sin. He who through an oversight takes another's property, *domino invito,* has committed a *peccatum materiale furti* although he may have had the intention not to commit any *peccatum materiale.* No one, therefore, has such intention, because it would be quite useless and without avail. Therefore *in casu valide* there has been consecration; Lehmkuhl (Theol. Mor., II, n. 125, 1): *Certissime conse-*

* See The Casuist, vol. I, p. 279.

cratae sunt. Consecration has taken place even in case the consecrator had intended never to consecrate a ciborium outside the corporal. For this intention can not prevent that *in casu* valid consecration ensues, because *hic et nunc* the intention does not exercise its influence. Should the consecrator observe that the ciborium is outside the corporal then his intention may have effect, otherwise not at all. Similarly one commits a sin who has resolved to commit the sin, no matter how firmly he may have had the general intention to commit no sin. That intention simply no longer exercises any influence. It has remained mere *habitualis,* indeed it is *implicite* discontinued.

Even if shortly before he renewed the intention so to consecrate, as he has intended, *i. e., super corporale* and then pronounce over the ciborium *extra corporale* the words with the *intentio consecrandi,* without thinking of a condition, then it is really consecrated, because that intention, although renewed, yet had no effect. If it had been in effect, the priest would first have ascertained that the ciborium was *super corporale,* or would have made his *intentio* with a condition. The *intentio conficiendi sacramentum* remained completely unaffected, and therefore also the *effectus,* the *confectio sacramenti.* It is exactly the same case as if someone, without noticing it, has two Hosts in his hands, and has the *intentio* to consecrate what he has in his hands, although he has also the *intentio* never to consecrate two large Hosts. All authorities agree that both are consecrated, and this is stated also in the *rubricae miss* (de defect. VII, 1-2) :*"Sacerdos habens undecim hostias, si putans quidem esse decem (hostias), tamen omnes voluit consecrare, quas coram se habebat, tunc omnes erunt consecratae." "Si sacerdos putans se tenere unam hostiam, post consecrationem invenerit fuisse duas simul iunctas, in sumptione sumat simul utramque."*

The *intentio* just to consecrate one Host has no effect, as the *intentio consecrandi* extends in reality over everything that is in his hands, over two Hosts therefore.

Of course both Hosts would not be consecrated if the two intentions had entered into a relation one with the other, if the consecrator for instance had formed the *intentio;* I will, if there are two Hosts, only consecrate the upper one. But then the *intentio* would not have extended to everything that was in his hands. If, however, the *intentio consecrandi* extends to everything that is in the hand, the intention *non consecrandi* two Hosts, even though renewed, is without effect. It runs, so to say, alongside, but does not modify the other intention, indeed it is *implicite* canceled. And so it is in our case. If the consecrant united the two intentions, if for instance he had said: I will consecrate the ciborium if it is not *extra corporale,* then the ciborium *extra corporale* would not be consecrated; the *intentio* then would have had no reference to the ciborium at all. In our case, however, he does not unite the two intentions. He thinks of the ciborium, has the *intentio* of consecrating it, without having in mind his previously renewed intention not to consecrate a Host *extra corporale,* therefore not modifying his *intentio* correspondingly. Had he had that intention in mind he would have placed the ciborium upon the corporal, or would have duly amended his *intentio consecrandi.* Thus that other intention is for the *consecratio* of no more influence than if it had not been made. There is often a mistake made in viewing the matter by assuming that a conditioned intention is present, that *eo ipso* the condition and the conditioned intention are somehow present in the will. It is concluded: *sunt in eadem facultate, ergo etiam in eodem actu.* An intention is not conditioned unless the condition is made. Now this is not the fact just because one at some time resolved of doing something only con-

ditional. Hence so often *post factum* the self reproach: "I wanted to do this in that way, or, under this or that condition."

We think we have proved, therefore, that the *intentio* was unconditioned and positive, as this alone could produce a doubt of the *valida consecratio.*

2. If the consecrator does not think *actu* of the ciborium, but had it brought upon the altar for his Mass, or had seen how it was brought upon the altar, and then intended the consecration, then again it is *valide* consecrated, though the ciborium by oversight remained outside the corporal. Of course the ciborium would have to stand *beside* the corporal and not somewhere in *cornu altaris,* because otherwise the *hoc* would not be true. (In our case there is question merely of the *intentio,* and it is presumed that all conditions in regard to form, etc., were fulfilled.)

And the reason for this assertion is that the *intentio* for the small Hosts was *virtualis;* for the priest approaches the altar in *casu, cum intentione consecrandi utrumque, magnam scl. hostiam et parvas. Et quia ex hac intentione aggreditur opus, habet intentionem virtualem.* The *intentio virtualis* is defined by St. Thomas as follows: *Non oportet quod in opere semper intentio conjungatur in actu, sed sufficit, quod opus ab intentione procedat* (In. IV, D. 6, q. 1, a. 2, ad 4).

In our case there is the same *intentio* which St. Thomas describes in an example: *"Cum sacerdos accedit ad baptizandum, intendit facere circa baptizandum, quod facit ecclesia, si postea in ipso exercitio actus cogitatio eius ad alia rapiatur, ex virtute primae intentionis perficitur sacramentum"* (3, q. 64, a. 8, ad. 3).*

* Without sufficient reason, it appears to us, and opposed to earlier authors, (cf. St. Alphonsus) Lehmkuhl maintains: "Si intra missam sacerdos nullatenus cogitavit de particulis eaeque extra corporale relictae sunt, consecratio

And then if later the *intentio* becomes *actualis* for the large Host that changes nothing in the *intentio* for the small Hosts, as it is not affected. If the Hosts were upon the corporal, all agree that, by virtue of the first *intentio,* the small Hosts are consecrated (St. Alphonsus, Lib. VI, n. 217; Lacroix, Lib. y. p. 1, n.; Laymann, Lib. V, tract 4, c. 2, n. 14). The latter does not even mention this circumstance, stating: *Sin vero Sacerdos, antequam ad sacrificandum egrediatur de consecrandis hostiis in altari positis . . . admoneatur easdemque consecrare proponat, postea vero omnino obliviscatur, censeri debent nihilominus consecratae, cum in tali casu neque hostiarum praesentia neque Sacerdotis intentio virtualis desideretur, sicut docent* (names of writers) *et colligitur ex Rubr. miss* (de defect. VII, 4): *Si intentio non sit actualis in consecratione propter evagationem mentis, sed virtualis, cum accedens ad altare intendat facere, quod facit ecclesia, conficitur sacramentum.*

Laymann, therefore, as well as the Rubrics, speaks quite posi-

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practice dubia est, quia non certo constat de voluntate consecrandi . . . Nam monitio antea e. g. a ministro facta, id quidem effecit, ut sacerdos haberet intentionem particulas postea ad consecrationem assumendi, sed certum non est, eum illas revera assumpsisse seu intentionem revera exsecutum esse; siquidem voluntas illa ante sacrum concepta non certo dici potest materiae consecrandae determinatio tempore consecrationis perdurans, sed probabiliter erat tantum propositum postea illas particulas assumendi et in consecratione includendi; quod num factum sit, dubium manet." For what reason, then, should the *voluntas ante Sacrum* not be *perdurans?* If one at the beginning of a task makes an act of the will, it prevails if not retracted *perdurans* the same, as if made during the task. And where the *intentio virtualis* is described, it is almost always thought of as *ante opus, i. e.,* not merely *ante confectionem sacramenti,* but also before all liturgical acts connected therewith. And, finally, is the *propositum postea illas particulas in consecratione includendi* not already the *virtualis intentio?* Or is there a difference between *propositum illas consecrandi* and *p. illas in consecratione includendi?* It need not further be expressed, and there remains in consequence no reason for a doubt.

tively without entering upon the circumstance whether the Hosts be upon the corporal.

It remains then only to prove that that circumstance does not change the effect. The reason for denying this is, *quia, cum intentio consecrandi extra corporale fuisset peccatum grave, illam tu habuisse non praesumeris* (St. Alphonsus). We have already demonstrated the invalidity of this objection. There can be no question of a *praesumptio,* because a positive *virtualis intentio,* not retracted, was certainly present, and, furthermore, because it is no sin to consecrate Hosts *ex oblivione extra corporale relictas.*

We maintain after all this, that the view (that the Hosts are consecrated) is the correct one. We believe we have proved sufficiently, (sub. 1), that intentions running alongside are of no value because they do not at all affect the *intentio* just then present, they remain without effect upon it. Everything argued sub. 1 applies also in 2, because both cases differ only in so far as in the first case an *intentio actualis,* in the second only *virtualis,* was present. And thus would be proved that also for this case the intention to consecrate was unconditional and positive.

From the remarks sub. 1, about intentions never to consecrate Hosts *extra corporale,* it follows necessarily that all intentions made in general, or concurrently in particular, are of no influence upon the *intentio perficiendi sacramentum.* The sole advantage they have is that which every good resolution brings with it, namely to make a man more careful about certain things. In order to have an influence upon the *intentio consecrandi,* they must every time be brought into connection with the same. If then in a *perfectio sacramenti* the *intentio* is merely *virtualis,* this condition must have been added to the *intentio* beforehand, and if it is *actualis,* it must now be added. If this is not done the *intentio* is not conditioned, no matter

how many purposes, which might or should act as conditions, may exist in the will *actualiter* or *habitualiter*. The *might* and the *should* do not count.

For this reason it seems the advice, to resolve under what circumstances one will or will not consecrate, is of no value if the resolution is to prove later the validity of a consecration. It is, however, to be recommended to make his *intentio* always as the Rubrics recommend: *Quilibet Sacerdos talem semper intentionem habere deberet, scilicet consecrandi eas omnes quas ante se ad consecrandum positas habet.** One, therefore, should omit conditions (for instance *si est super corporale*) as they may subsequently cause embarrassment.

FR. BREMER.

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* This *intentio*, as there found, is positive and unconditional, and for this reason applies also to the small Hosts which by oversight were left *extra corporale*. This is not the case of the other expression in the Rubrics: *si aliqua Hostiae ex oblivione remaneant in altari . . . non consecrat.* For (1) *in altari* may be everywhere upon the altar, *i. e.*, in *cornu altaris*, and then the form *hoc* would no longer be true; (2) they may be Hosts of which the priest knows nothing at all, and knows not whether he may consecrate them; (3) it seems as if the words there *cum non intendat consecrare nisi quae videt* belonged also to this sentence. That would mean that these Hosts were not consecrated, if the priest makes the *intentio* to consecrate only what he actually sees, and then in forgetfulness does not look at them.

LXII. THE CLERGYMAN'S DEMEANOR

If any one is expected to be all things to all men it certainly is the priest. The priest is there for the people's sake, and he must be able to mingle and to talk with them. He must know also how to mix with those of refined forms, in order to gain an influence in their circles for the interests of religion. This ability must be aimed at in the priest's training. The Council of Trent (sess. 22) has impressed upon priests *the sacred duty* that in their garb and demeanor, their manner and conversation, as in their whole bearing and actions, they should be dignified. And even Holy Writ, that sober book of wisdom, has not disdained, in ancient times already, to give rules of demeanor, as for instance in the following passages: Prov. xvii, 24; xviii, 13; Ecli. xix, 26, 27; xx, 7, 8; xxi, 23, 26, 27, 29; xxxi, 12; xxxii, 10-13, etc.

No doubt remains therefore that upon polished demeanor and pleasing ways great stress is to be laid by the priest. If he lacks these he can not be surprised if he meets with lack of regard, or is even avoided. No man's ways are more closely watched than the priest's (Compare I Cor. iv, 9). It must be obvious, also, that it is polish of deportment which opens to the priest the door of cultured society, where he can gain not only personal regard for himself, but also esteem for the priesthood in general. Of course the priest's polished forms must never degenerate into affectation, and never must the priest in his worldly deportment in the least degree forget or compromise his priestly dignity. He should bear himself, frankly and unostentatiously, as a college bred man, in speech and manner, and should demonstrate that he is not only well versed in the sciences but that he also has the tact and well bred forms required in polite society and in the intercourse with persons of rank.

Virtue and piety are of themselves precious pearls, and if set in amiableness and pleasant demeanor their value will be enhanced and will invite imitation. There are many people who by our unaffectedness, coupled with reserve and ennobled by modesty, may be divorced from their prejudices against virtue and incited with a desire for that which formerly was to them unattractive and somber. Only in this way will the priest succeed in making himself beloved, as of God so also of man, such as the Holy Spirit in Ecclesiasticus lxv, 1, says in praise of the leader of the people: *Dilectus Deo et hominibus.* With this ideal attained, and if the clergyman has by well bred ways gained esteem and respect in social circles, it will be much easier to gain friendly footing with families of refinement and thus exercise a good influence also in those circles.

This matter receives usually small notice, but wrongly so. If we glance at the model given us in the life and doctrine of Christ, the right appreciation for this consequential matter can not be lacking. In this connection the following passages in the New Testament should also be compared: Phil. iv, 5, 8; Rom. xii, 10, 13, 15, 18; xiii, 7; Luke xiv, 8-11; xxii, 26; Matth. v, 39-42; x, 16; xi, 29; xx, 27, 28.

The priest's life must be fashioned in every respect after Christ, the High Priest, who in all His poverty did not forego nobility of birth, and in all His humility took with dignity His part as true man among men; surely our divine Teacher did not see in these qualities any danger of lessening the fruits of His activity, or of suffering in genuine popularity.

Let us draw briefly the conclusion: We must earnestly endeavor to imitate the example of the incarnate God, and in very truth "become all things to all men" (I Cor. ix, 22).

Jos. M.

LXIII. HOW CAN MEN BE INDUCED TO FREQUENT COMMUNION?

"I can not get men to receive frequently the Holy Sacraments," many a priest complains, and therewith he lets them go their own way and turns his attention to the women, who can, with less trouble, be held to heed the priest's advice. It is no doubt a remarkable fact that even men who in public life valiantly and energetically fight for the Church, are—*exceptis excipiendis*—very often satisfied with the *at least once a year,* as regards Holy Communion. This is not a wholesome state of affairs; the exterior life must draw strength from the interior, otherwise it will degenerate. A devout life, practical Christianity, are inconceivable without Holy Communion. What can be done?

1. Men who seldom or never go to hear a sermon, who content themselves with hearing a low Mass, do not give much opportunity to the priest to get at them. How can, nevertheless, influence be brought to bear upon these men? At meetings of a profane character the priest can hardly deliver a sermon; nevertheless there is no end of opportunities, where in a few words, brief and to the point, attention may be drawn to the necessity of practical Christianity, and some good will always be done by such words.

A thoroughly Catholic surrounding at home will often be the only means of reaching this class of men. A few kind words from a pious mother, wife or sister, have frequently achieved great results.

With men who attend sermons the task is an easier one. Above all things the priest should frequently throughout the year invite the men to the Holy Sacraments. The invitation must be cordial, kindly. A priest who summons the men of his parish to confession

in harsh and sarcastic terms will of course get not many to come. The feasts of Our Lord, of the Blessed Virgin and of St. Joseph offer good opportunities for such invitations. Many priests have found from experience that in cases of death the relatives, including the men, may be easily induced to receive the Sacraments. It will be wise to express publicly appreciation and pleasure when there has been a good attendance of men.

2. A second means consists in pointing out that God has shown special predilection for men, confiding to them the most important positions in family, State and Church; the priesthood is only accessible to men.

3. Many sodalities and fraternities of men receive Communion in a body, which is a great inducement. A prudent priest will find many occasions, even in worldly societies of Catholics (veterans, firemen, policemen, etc.), of suggesting to the men to receive Communion, for instance at the burial of a member, on anniversary days, etc. Some members at least will take heed and that is a result not to be undervalued.

4. The reception of the Holy Sacraments must be made for men as convenient as possible. Men should not be kept waiting very long; they have not much patience. On special days for men's confessions appoint special hours, when they can conveniently come. Induce the women to come in the afternoon and to leave the evening to the men.

It is incumbent upon confessors to address the men in polite and pleasant tone, to speak to them, as the difference in age may suggest in individual cases, as friend to friend, as father to son, disregarding high or humble rank. We win them over in this way, and facilitate confession. By friendliness and kindness we show our good will toward them, we get them to return readily. If the con-

fessor is obliged to demand from a man that he receive the Sacraments oftener, it is advisable to let the penitent himself determine when he can and would like to come to confession again. The confessor may express his reliance that the penitent will keep his word.

The confession should not take much time, otherwise men become unwieldy. The priest should not ask too much. Conscientious observance of the divine commandments and of those of the Church, fulfilment of the duties of the state of life, courageous and loyal profession of the faith, these things should be briefly commended.

5. The religious training of men must begin at school age. The priest should take pains to induce boys to receive Holy Communion monthly; the habit to receive frequently will often adhere to them in later years.

A. PACHINGER.

LXIV. CELEBRATIO AND BINATIO, AFTER BREAKING THE FAST

The villages M. and G. are about two miles apart. One Sunday morning, having said Mass, and breakfasted shortly afterward, I was called from M. by a messenger to the pastor of G., who had been suddenly taken ill and who wished me to officiate in his stead at High Mass, as otherwise his congregation would go without Mass. Even if they had betaken themselves to M., where there was another Mass, they could have reached the church only after the elevation, as the sermon (according to custom there) was preached after the Communion. *"Idem casus,"* so writes Holzmann, *"nuper contigit vel saltem contigere potuisset Riedae in mea patria, ubi D. Parochus die festo fuit subito infirmatus et impotens effectus ad illo die celebrandum. Ablegebatur nuncius ad . . . monasterium Ursinense O. S. B. cum precibus, ut mitteretur sacerdos, qui loco Parochi Divina perageret. Sed quoniam nuncius primum circa aut post horam decimam advenerat, omnes sacerdotes jam celebraverant, excepto solo Rmo. D. Praesule ac Abbate Bernardo; qui proinde illico se itineri accinxit et rheda Riedam delatus ibidem ad aram litavit cum maxima populi aedificatione et solatio."*

Abbot Bernard was of course in the fortunate position to render the asked assistance, not having broken the *jejunium naturale;* I, however, had, as already mentioned, partaken of ablution and of food before becoming aware of the embarrassment of the pastor in G., and I therefore gave, regretfully, a declining answer. He, however, considered my view a rigoristic one, and expressed his belief that in this case I might, even after breaking the fast, celebrate Mass, because if the Mass were omitted the people would be given

scandal. That scandal would not be absent, he, as pastor, were better able to judge than I, a stranger, and for this reason he advised me to lay aside my opinion and be guided by his. The people not understanding that the prohibition to say Mass after breaking the fast, and concerning only the individual person of the priest, was more binding than the obligation of a whole parish to hear Mass. "But," I replied, "how can the people be scandalized, if it is made known to them that the pastor has been unexpectedly disabled, and that the summoned priest, not having foreseen the case, had broken the fast and therefore is prevented from celebrating a second Mass? In my opinion the people, if properly instructed, are more appreciative than you assume. Besides, those well disposed and those less critical will not give much heed to the matter beyond some surprise, and in simple faith they will take for granted what is told them." This was the extent of my reply. My offer to hold a devotion instead of saying Mass was not accepted, and I was dismissed in disfavor. That same day I looked over Holzmann's Moral Theology, not from any uncertainty, but to reassure myself, and there I found, besides the above extract, also the following passage: *"Quod si ergo in hoc casu etiam altefatus Rmus ipse antea jam celebrasset, nullus alius sacerdos, qui loco Parochi sacrificaret, mitti potuisset, quia ob sumptam in Missa jam lecta ablutionem nullus amplius erat jejunus."*

Nevertheless, had the pastor been able to convince me, or could I have convinced myself, that without doubt, or even only probably, through the omission of the Mass scandal for the people would have ensued, that is to say, *"gravis populi offensio, periculum gravis suspicionis vel dicterii contra sacerdotem, aut periculum, ne plures, quamquam possint et debeant alio se conferre ad audiendam Missam, ex inopinato illo casu ansam sumant cum peccato gravi Missam negligendi"* (LEHMKUHL, Theol. Moral, II, n. 162), then it would not

have been unlawful for me to say a second Mass, after breaking the fast, as, what is here presupposed as *conditio sine qua non,* my *defectus jejunii* was neither known, nor could have easily become known to the people.

In confirmation of what has been said I add a few more lines from Holzmann: *"Dices: si oriretur ex non-binatione scandalum in populo, liceret sacerdoti etiam non amplius jejuno celebrare; ergo etiam licebit in casu nostro. Respondetur concedendo in facta hypothesi antecedens et negando consequens. Disparitas est, quia in casu oriundi scandali liceret uti epikia, et mentem ecclesiae interpretari, quod sacerdoti, etsi non amplius jejuno, nolit interdictam esse iteratam celebrationem; siquidem praeceptum de non praebendo scandalo, quum sit juris naturalis, praecepto ecclesiastico de Sacro celebrando a sacerdote jejuno praevalere debet et strictius observari. Secus in nostro casu, in quo nullum intervenit scandalum, quum populus non scandalizetur, si edoceatur, Parochum repente incidisse in infirmitatem, alios vero sacerdotes casum Parochi non praevidentes jam celebrasse, adeoque ob defectum jejunii naturalis sumpta ablutione inductum secundo celebrare non posse, et parochianos ob impotentiam audiendi Missam excusari a peccato, tametsi eo festo Missam non audiant"* (Theol. Moral, II, n. 379).

All this fits my case. Similar cases occur not infrequently, and each individual case should be well weighed and considered. Ordinarily there ensues from the omission of Holy Mass, and the solemnity joined to it, a regret only, but *no scandal.* Even if some ignorant people, or the roundtable at the tavern, may be given an opportunity to hold forth against the priest who inadvertently broke the *jejunium,* this would be by no means sufficient reason to ignore the ecclesiastical precept. But if one might have to fear what I am about to relate? What in such case?

I once heard a malicious person say that a certain priest was not in the state of grace, and that he purposely partook of some food to have a pretext for not saying Mass, to escape in this way the mortal sin of celebrating sacrilegiously. Where such suspicions and calumny are to be feared (a case not likely to happen often) a priest, to prevent the same, may, if possible, keep his mishap secret, and in good conscience celebrate Holy Mass.

It may happen, and this would be more likely, that some people in town or country, if Mass was not said in their own church, would not take the trouble to go to another church within their reach, and thus sin grievously. In this case, likewise, if no other priest were obtainable, a *sacerdos non jejunus* could say Mass. Provided of course the *defectus jejunii* is neither known to the people, nor likely to become known. I have repeatedly noticed how priests, *videnti populo,* partook of the ablution, and later said another Mass. This was wrong, although the people believed this could be done in case of necessity (and in every one of these instances fortunately they so regarded the case). If at other times a priest in distraction should do something similar, it will not be easy for him to avoid talk, if he makes this (correctly) the ground for not saying Mass.

BERNARD DEPPE.

LXV. APPLICATION OF PROBABILISM

Romualdus, a not very conscientious priest, yet inclined to scrupulosity and suffering from it all the more as up to the present he has been unable to determine upon following one certain moral system, turns now to probabilism in order to rid himself of his scruples. He intends to carry it through in such way that he will invariably, in regard to himself and in the guidance of others, follow the less severe, if still probable, opinion. Especially does he believe: 1. That whenever opinions differ whether an obligation is present or not, the opinion favoring freedom from obligation may be accepted; 2. The lenient opinion is to be accepted if doubt prevails whether an obligation (sin) be grievous or slight; 3. If, finally, with regard to the necessary subjective conditions (appreciation and sufficient action of the will) for a grievous offense, there prevails an uncertainty in the penitent, according to the same principles of probabilism he may always decide on a merely slight offense.

What is to be said, I. Of Romualdus' view in general; II. Of his particular tenets? Of course it is presumed here that probabilism and its application is lawful.

I. According to the lucid explanation of LEHMKUHL (I, n. 82 sq.) probabilism applies only to the intrinsic lawfulness of an action, or its appropriateness for a (certain) end to be attained. In regard to the matter and form of the Sacraments, in so far as their validity is concerned, the system can not be applied. Eternal salvation is the goal of every man, the means necessary for the attainment of this goal must naturally also be available. No mere probability can be of assistance in this respect; there must be, as is self-evident, as far as possible, a moral certainty attempted. Furthermore a great

deal that is lawful in itself, may, either in consequence of the general frailty of human nature, or in regard to special circumstances, conceal dangers and therefore be more or less unlawful; lastly, man not only must avoid the evil, but also do the good, and, in proportion to his state and the graces granted him by God, he must strive after perfection; it is the confessor's duty not merely to prevent, as far as possible, a penitent from sinning, but also to lead him on to the path of virtue. Much as it is to be desired that the penitent should be enlightened to such extent that he would not sin as result of a false conscience, yet it would be wrong to advise, or even command him, under all circumstances to choose the easier way.

From the above it is obvious under what suppositions alone Romualdus' proceeding might be considered justified, and that for him, who on one hand inclines to scruples, and is not very conscientious on the other hand, as is not infrequently a fact with scrupulous people, there is the danger of entering upon a course which is opposed alike to the nature of probabilism and to the rules for its application.

II. With respect to the particular tenets of Romualdus, the following must be said:

Ad. 1. The tenets here presented—supposing of course the premises suggested under I. prevail—lie in the nature of probabilism; hence the adherer of this system may and will follow it.

2. From the maxim: *Lex dubia non obligat* there appears at the first glance to follow not only: *Non est imponenda obligatio, ubi de ea non certo constat;* but also: *Non est imponenda gravis obligatio ubi,* etc.

Upon this point also—again of course *suppositis supponendis*—we may agree with Romualdus. Upon closer observation, however, the matter would not seem quite so simple. Of the cases namely

in which there is doubt between strict and lesser obligation (grievous and slight sin) two distinct kinds are distinguishable. Firstly, such doubt may arise from the uncertainty, whether in addition to a slight obligation there is not also, different from the first, another more serious obligation. Here, according to the principles of probabilism, one will as a matter of fact decide only on the absence of a serious obligation (in practise). Thus he who recites his breviary voluntarily without interior attention, certainly is at fault on account of lack of reverence toward God, although on this ground as a rule only at a slight fault; whether he also offends on account of transgressing an ecclesiastical precept, that is, whether the latter prescribes the inner attention and this strictly, and *sub poena nullitatis recitationis*, upon this point there prevail two contradictory probable opinions. Practically, an obligation on account of the ecclesiastical precept will therefore not be acknowledged. For another similar example see LEHMKUHL, I, n. 900.

Secondly, there are cases, which do not deal with two obligations (sins) of which one—the greater—is questionable, in which there is doubt, rather, whether the one present obligation (transgression) is serious or slight. For instance there are various probable opinions as to whether a promise under oath to do something venially sinful is a slight or grave offense. Again, theologians are not unanimous as to what *materia* of a theft is to be considered *gravis*, so that also here there are several probable views. If we compare these two sorts of cases, we find without difficulty that they are not quite identical, but a discussion of their difference may here be omitted as it will appear from the following argument. But how does there result from the theoretical probability of a milder opinion at once its practical certainty?

Worthy of note, and an argument against an affirmative answer,

is the fact that even probabilists, like BALLERINI and LEHMKUHL, of whom the former for the first time made a thorough application of probabilism, and the latter, after a precise statement of the theoretical aspect of the case, invariably draws practical conclusions according to the system which he represents, do not, for cases of the kind now contemplated, always advance as certain the practical conclusions (Compare GURY-BALLERINI, I, n. 311; n. 313; II, nn. 208 seqq.; LEHMKUHL, I, n. 413*; II, nn. 232 seqq.).

Furthermore, the principle upon which probabilism is based can hardly be here the furtherance of justice or fairness. For though it may be assumed that the lawgiver does not intend to bind by a precept the existence of which is doubtful, it is not so easy to prove that he must in every case specify the *degree* of obligation. Furthermore, probabilism, like every other moral system, is only of value as a rule of conduct if brought to the consciousness of the mind; the conscience, however, may be easily trained to distinguish, in the heat of struggle, distinctly enough between the lawful and the unlawful; however, it is much more uncertain that in temptation the magnitude of an offense is judged, when the will has already decided for the evil. If, moreover, in a moral discussion the supernatural may be referred to, it must be remarked that in our cases grace also—already partly rejected—would hardly exert a specially effective force. Therefore the probability of the milder opinion, of which there is mention, will be frequently of no interest in practise, because consciousness of it did not prevail in the act, whence with some certainty a conclusion may be drawn as to whether from the theoretical probability the practical certainty follows. Let me quote an

* It is said there very significantly: "Maxime autem tunc id (peccatum leve esse) in praxi dici debet, si iurans ad actionis, quam promittit, pec caminositatem non attendit. . . ."

analogism. In order to incur a penalty imposed by a certain law it is usually necessary (at least in the case of ecclesiastical penalties) that the offender know something of the penal law, yet a precise knowledge of the nature and measure of the penalty is not in the least requisite.

From all this follows, that, in this second class of cases, from the theoretical probability of the milder view can not always be concluded with certainty its validity in practise; Romualdus did not judge rightly, as the supposition of a merely slight obligation (sin) is not justified without special reason.

The following may be adduced in elucidation and support: Supposing a grave obligation (offense) is not considered certain, then, 1. The offense can not oblige to anything incurred by a positively grave fault, for example to the reception of the Sacrament of Penance before Holy Communion. 2. There would, however, be the obligation of awakening perfect contrition before the reception of all Sacraments for which the state of grace is necessary, as here it is a question not of a positive precept, but of something in a certain respect required *necessitate medii* (above 1). 3. The same may well be held in respect to the state of the soul required for the worthy *administration* of the Sacraments. 4. Whether this latter result follows in every degree of (still actual) probability of the more severe view, we do not venture to decide for the present. Theoretically considered it appears really to be the case, as there where something in the nature of a means must necessarily be present, any just doubt should be removed. In practise there would be frequent cause for an uneasy conscience, especially in the instance last mentioned.

III. The question of the offense of a penitent with consideration of the perception and action of the will, is a pure question of fact, and must be decided according to fixed rules for ascertaining a fact, and

for this reason has no direct connection with probabilism. But if after conscientious inquiry a doubt remained about the gravity of the offense then it would be a *contradictio in terminis* to decide merely for a slight sin. In regard to the practical consequences (compare LEHMKUHL, I, n. 50) there would apply our remarks ad. II. (1-4).

P. AMBROSE RUNGGALDIER, O.S.F.

LXVI. DO CHRISTIANS BECOME MARTYRS BY DYING IN THE VOLUNTARY SERVICE OF PLAGUE-STRICKEN PATIENTS?

This theological question occasionally gains new interest. St. Alphonsus gives the brief answer (I, VI, n. 100): *"De illis, qui in obsequio pestifererum ex charitate moriuntur, dicit Martyrologium Romanum* 28 *Febr. 'Quos velut martyres religiosa fides venerari consuevit.' Et veros martyres esse, tentent* 12 *academiae,* 13 *cardinales et plus quam* 300 *auctores contra Hurtadum et alios."* Thus St. Alphonsus. The learned P. Gobat, S.J., died 1679, speaks in his work on Moral Theology (Tom. 1, Tract VI, Casus V) of the plague which in the year 1611 fearfully devastated the city and environs of Constance, and of the zeal with which the Jesuits upon this occasion devoted their services to the plague-stricken.

There he refers to a work, termed a "Golden Book," in which, as he sets forth, is proved on many authoritative and reasonable grounds that all victims of Christian charity, *Victimae Charitiatis,* as he calls them, who perish in the voluntary spiritual or corporal care of the plague stricken, are Christian martyrs, if not in the strictest, yet in the real and true sense of the word, *"non quidem in rigidissimo, altamen in vero et proprio sensu martyres."* The Congregation of the Index had, so Gobat informs us, permitted the publication of this work with the qualification: *dummodo adderetur, haec ab illo duntaxat, probabiliter, disputata esse.* In connection with this opinion Gobat then puts the question whether such martyrdom in the service of plague-stricken secures the privilege accorded to the bloody martyrdom according to a probable opinion—to which is opposed one likewise probable, the privilege, that it, similar to the

Baptism with water of adults, effects justification *cum sola attritione*, without perfect contrition, *"facere ex attrito contritum."*

After contemplating the question the author does not venture to answer it affirmatively. Practically this question is not of importance, as such a sacrifice for charity's sake without an act of perfect contrition is hardly conceivable.

Of more recent theologians Dr. Oswald, in his treatise upon Baptism, says: "The *violent* death suffered for Christ's sake, constitutes the idea of martyrdom; for, whatever some theologians may observe to the contrary, the death of a priest incurred by spiritual care of plague-stricken suffices not for the glorious title of a Christian martyr."

Very wisely St. Alphonsus prefaces his answer to our question with the *velut martyres* of the Roman Martyrology, in order to adjudge on the one hand a very special merit to the heroic sacrifice of life in works of charity to the plague-stricken, without on the other hand granting them the full title of martyrdom. In this sense our question has also been answered by St. Charles Borromeo, and his Christian contemporaries, during the plague then raging in Milan. J. P. Guissano, the saint's biographer, contemporary, private secretary and faithful assistant, relates, in the fourth book of the saintly cardinal's life, of priests who at that time cared for the spiritual needs of the plague-stricken: "Many of these priests fell victims to the plague, in particular some Jesuits and Barnabites, and ten Capuchins, all of whom may be compared to those holy priests and deacons, who, in the reign of the Emperor Valerian, in Rome, met death in caring for the plague-stricken, and concerning whom the Roman Martyrology, under date of February 28, speaks as follows: *'Romae Commemoratio Sanctorum Presbyterorum, Diaconorum, et aliorum plurimorum, qui tempore Valeriani Impera-*

toris, cum pestis saevissima grassaretur, morbo laborantibus ministrantes libentissime mortem oppetiere, quos velut martyres religiosa piorum fides venerari consuevit.'"

P. Johann Schwienbacher, C.SS.R.

LXVII. THE RECONCILIATIO ECCLESIÆ SUBJECTIVELY PRESCRIBED, ALTHOUGH OBJECTIVELY NOT NECESSARY

A priest, while celebrating Mass, is made the target for an assassin's bullet. The priest, although hit by the bullet, remains miraculously without injury beyond slight excoriation of the skin, while the assassin fires another bullet into his own brain and falls dead on the spot. The assassin and suicide was later identified and serious doubts were entertained as to his sanity. The question is, must the celebration of Holy Mass be suspended? Is the Church to be considered profaned and in need of re-consecration?

Of the various causes of a *Pollutio ecclesiae* we need only consider here, 1. *Sanguinis humani effusio,* and 2. *Homicidium.* MARC (II, 1629): *Requiritur: copiosa effusio, non aliquarum guttarum, sed notabilis sanguinis, et sufficit vulneratio in ecclesia facta, etsi forte sanguis extra ecclesiam effunditur.* As regards the priest, only his shirt and undershirt were stained with small blood spots, for this reason therefore no *pollutio ecclesiae* here took place. The ordinarily inevitable effect of the bullet was averted in a wonderful manner. 2. In reference to the *homicidium-suicidium debet actio esse letalis graviter peccaminosa, et complementum suum habuisse in Ecclesia* (LEHMKUHL, II, No. 222). As madmen and lunatics are not allowed at liberty but are as a rule watched and confined, the perpetrator must be supposed of sound mind, and his deed as grievously sinful, till the contrary is proved. Therefore it is proper to suspend the *Celebratio Missarum,* and to have the church reconsecrated, although, objectively considered, it would not have been necessary if the perpetrator's insanity had been established at the

moment, instead of some time afterward. Under the circumstances it would have been unlawful to celebrate Mass without previous *reconciliatio.*

P. Joseph M. Thuille, O.S.B.

LXVIII. CHILDREN'S CONFESSIONS

If school children have been well prepared for their first confession by the catechist, and if a brief instruction preceding subsequent confessions is not neglected, the tender conscientiousness peculiar to childish years grows and is strengthened, and the children, as a rule, will be anxious to realize all their sins and to confess them. It happens indeed that children, a few moments after having received absolution, or just before Holy Communion, if this takes place the day after, come to the confessional again, to mention some sin or other they had forgotten.

Catechists sometimes try to come to the relief of a too great conscientiousness or anxiety in children, by giving them a printed form of examination of conscience, and advising them to mark in this form the sins of which their conscience accuses them. Other catechists, at least during instructions for first confession, dictate to the children a schedule following the Ten Commandments, the capital sins, etc., bidding the children to make use of it in their examination of conscience. Other catechists again advise candidates for first confession to write their sins on a piece of paper and read them off in the confessional. It becomes frequently the practise of children to confess their sins from such written notes. There are then confessors who take away these notes and require the child to confess from memory, others again take the notes, read them through hurriedly, put some questions and then proceed with exhortation and absolution.

What is to be said of these practises?

As regards printed examination of conscience, I must admit that their use by school children appears to me as not advisable. The

forms of examination of conscience, at least those with which I have become acquainted, are too detailed, entering into minute details (in one such form for children I counted one hundred and fifty sins) and are thus calculated to burden the children's memory, and, as they do not always sufficiently understand the details, lead them to confess sins which they have not committed. These printed forms sometimes cause children, who are inclined either to fear or to indolence, to memorize all the sins there enumerated; the former do it so as to be quite safe, the latter to save themselves the trouble of examining their conscience. A schedule for the examination of conscience should not be put in a prayerbook intended for the young, nor in a catechism; for children will underscore with pencil certain sins and read them off in each confession. It certainly is a lesser evil if the child in the examination of conscience, which the catechist goes through with the whole class, does not realize some committed sin, than if he, following the printed form, would trouble himself with a long list of possible sins and either get an aversion to confession, or fall into one of the faults above mentioned.

A printed examination of conscience leads some children to only mention in confession the sins found therein, and not others which they may really know to have committed, not making therefore a complete confession at all.

Even with proper use of the printed form, the catechist worries himself and the children with the enumeration of all possible kinds of sins, the attention is anxiously directed toward every possible failing, and over the solicitude for the material completeness of the confession the most essential part, perfect contrition and earnest resolution of amendment, are either entirely neglected or not properly considered.

Writing on a blackboard the chief classifications of sins is to be

preferred to the use of printed examinations of conscience; those preparing for first confession should be made to take down for themselves these classifications, as a help in the examination of conscience to be made in private, and as an effectual incentive to methodical reflection.

Under each classification the catechist will mention the different kinds of sins which fall under that head, and bid the children to reflect upon them now, and more so in their examination of conscience, and to commit to memory those transgressions of which they find themselves guilty. The treatment, in this manner, of the Second Commandment may here serve as an example:

"What is the Second Commandment? How is the name of God profaned? Use of the Holy Name irreverently, or in vain. Now reflect: Have I uttered the name of God irreverently? Have I cursed? How often? Have I taken God's name in vain? How is the name of God desecrated? I will write down: Cursing, blaspheming. Reflect: Have I cursed? How often? Have I blasphemed against the good God? Have I spoken irreverently of God? Of the saints? In what further way is the name of God misused? I will write down: Swearing. Reflect: Have I taken an oath? Have I called God to witness a lie? Would you mention in Confession all the sins I have mentioned? Which only? Who must mention them all?

If the children are aided in this manner to examine their consciences, they will be enabled to comprehend the scope of the individual commandments, and accustom themselves to confess without notes. But even with an instruction of this kind, there will be many children who feel the need of writing down their sins, and of making their confession from written notes. What are we to think

of this manner of confessing sins? Is it to be rejected entirely, to be forbidden?

This will hardly be maintained by any catechist or confessor. As regards those who make their first confession, nearly all catechists agree that they should not only be allowed to make notes, but should even be so advised. The children are thus impressed that the examination of conscience, and the confession of all sins committed is of great importance when receiving the Sacrament of Penance, and that this part should for this reason be done with great care and diligence.

The children will also be protected against anxiety, by the consciousness that they have told everything and not forgotten anything that appeared to them as necessary to be confessed. And this is not to be undervalued. Every catechist and confessor knows from experience that children can not well distinguish between forgetting and purposely concealing, and those who are disposed to be anxious, easily doubt the validity of their confession if they have forgotten to mention something which they had been prepared to tell.

This erroneous perception may even lead to sacrilegious Communions *ex conscientiae erronea,* if, namely, the child considers himself bound to repeat the confession but does not do so from shame or fear, or for lack of opportunity.

But even in subsequent confessions one should not forbid children to write their sins down and to confess them from notes. It may be true that such confession lessens the humiliation of the accusation; that it induces scruples; that the reading interferes with contrition; that the confession is deprived of that spontaneousness whereby it becomes a frank disclosure of the heart; that it leaves the soul cold. But the experienced catechist and confessor will not consider these results as certain and general. On the contrary, the child confessing

from notes is before and during confession more at ease, and can, with a good preparation by the catechist, direct his thoughts and feelings more freely and intensely to contrition and resolution. When children leave school they desist of their own accord from writing down their sins. The prohibition to confess from written notes may lead not only to anxiety, and to sacrilegious Communions *ex conscientia erronea,* but also to fickleness and frivolity at confession, for children may come to the conclusion that without notes it is not possible to make a thorough confession, and that for this reason it does not much matter whether they forget more or less sins. Children must be treated as children. Give the children encouragement, strive to inspire them with the confidence to confess either entirely without notes, or at most to make use only of general classifications; but do not prohibit the writing down of sins and their reading off at confession.

Many confessors are so opposed to children confessing from notes that they do not wait patiently till the child has read to the end. They either take the paper out of the child's hand and read it hurriedly, or order the child to put the notes aside and confess from memory. Either of these ways shows want of patience; yet, without patience, and a great deal of patience, one is not well equipped to hear children's confessions. Taking the notes from the child to read them over I can only approve in the case of the child speaking so low and indistinctly that he can not be understood. Taking away the notes and bidding the child to confess from memory is decidedly to be condemned, for it is equivalent to the command: Just mention whatever and how much you can remember; it is immaterial whether you confess all your sins or only a few! The child had relied on his notes, probably the fruit of great pains, he is deprived of this by his confessor who requires him to confess from memory. Con-

fused at this unexpected obstacle to his plans, he is unable to confess fully from memory; his confession will seem to him incomplete and invalid, and he will probably approach Holy Communion with a trembling heart, if, from fear, shame, or lack of opportunity, he can not go to confession again. And if not worried, because prevented from making a thorough confession, he will think the thoroughness of the confession is not so essential as he imagined, since the confessor himself attached so little importance to it.

Experienced catechists and confessors hold therefore that beginners should be allowed to write their sins down, and should even be assisted in doing this; the tender and sacred fear will not be destroyed thereby but rather nourished. Nor should older children be forbidden by the catechist to write their sins, even *per extensum,* and it should be considered a step toward confession from memory if they do not take complete notes with them into the confessional; in time they will learn to confess without any notes at all.

Encouraging children to confess without notes finds its proper place in school, not in the confessional; there it is always ill advised and may either at the moment, or even for the future, result in evil consequences. *Juventuti magna debetur reverentia* (here consideration) QUINTILIAN very properly remarks, and these memorable words should not be lost sight of by confessors, in order that they may not render themselves culpable of the *scandalum pusillorum.* Children instructed by a worthy catechist have a sacred awe for the Sacraments of Penance and the Holy Eucharist; sad indeed it is if this precious treasure of the childish heart suffers by the application of a pet theory, or by lack of patience, on part of the confessor. The Holy Sacrament of Penance is so admirable a means of education that Protestant ministers have been known to deplore their lack of it. By frequent confession the child accustoms himself early

to the proper conception of sin, guilt and atonement, which has so important an influence upon the moral life, and which the sensuality, vanity and frailty of the irreligious world would so gladly confound. It is proper to child nature that the conscientiousness of guilt weighs upon its tender conscience, and that after a sincere confession the child feels greatly relieved. Hardly anyone else can make so profound and lasting an impression upon the heart of a child, as a prudent, kindly confessor in the confessional. If the Sacrament of Penance is to bear its proper fruit the confessor should not let anything interfere that might destroy or lessen in any way the reverence and sacred awe which the children have for it. This is true in regard to all the five things necessary for the worthy reception of this Sacrament, but most particularly of the confession, because the children consider this, as a rule, as a very important, if not the most important part of the Sacrament, and because it is just this that puts to test the patience, charity, conscientiousness, and prudence of the confessor.

CANON ANTHONY SKOCDOPOLE, D.D.

LXIX. IS IT PERMISSIBLE TO GRANT ABSOLUTION TO A DYING HERETIC?

Januarius Bucceroni, S.J., Professor of Moral Theology at the Gregorian University in Rome, gives (in Analecta Eccl.) the solution of the following case. A young German, Titius, Protestant, of such good moral conduct that he may be said to live in heresy without fault of his own, was taken seriously ill while staying with his mother in Rome. The German Catholic priest Cajus, befriended with Titius, at once went to visit Titius, solicitous for his eternal welfare. During their chat Titius declared himself a sinner, and begged the priest to pray that God might forgive him. The priest wished to avail himself of this good opportunity to lead Titius formally into the Catholic Church, and to baptize him. He disclosed his intention first of all, privately, to the mother, who, however, opposed the idea very strongly, adding that no doubt could exist about the validity of the Baptism, and that she thereafter would allow the priest to speak to the sick man only about points of faith common to both religions; as a consequence she did not leave the patient's side after that. As the patient's condition grew worse, the priest saw no other alternative and addressed the patient in the following manner: "Do you believe everything that God has revealed through Christ? Do you sincerely repent of your sins? Do you, before God and before me, confess yourself, as you have already done, to be a sinner? Are you willing that, in so far as I can, I assist you to attain salvation?" The patient assenting to every question, Cajus directed him: "Put your trust in God; He will forgive you your sins." Thereupon he gave him, secretly, absolution *sub conditione*. Titius died shortly after and was buried according to the Protestant rite.

The questions are:

I. Whether a material heretic, who has the use of reason, and is in danger of death, can be validly absolved without first having joined the Catholic Church?

II. Whether Cajus proceeded correctly?

Resp. ad. I. It is true St. Alphonsus excludes dying heretics from absolution, when he says: *"Haeretici enim, etiamsi in eo casu dent signa poenitentiae, non debent absolvi, nisi expresse absolutionem petant, quia tales nunquam prudenter praesumi valent ea signa praebere in ordine ad confessionem, a qua summopere abhorrent"* (I. 6, n. 48). But this *praesumtio* is a *praesumtio generalis,* which not only must yield to the truth, but to a contrary *praesumtio in casu particulari.* One is justified to presume the contrary in the case of a merely material heretic, who lives in good faith and is ready to do everything that God requires for attaining salvation.

P. Gury (Casus, Vol. II, n. 488) distinguishes, for this reason, between material and formal heretics, and holds that to a material heretic, unconscious and in danger of death, may be granted absolution *sub conditione.* Gennari (Consultag., p. 255) extends this also to formal heretics. But if absolution, under such circumstances, can be given to an unconscious person, it can be given also to a heretic who is yet conscious.

One can only be opposed to the granting of absolution in the belief that it would be invalid on account of the lack of the *intentio* and the *actus poenitentis.* But is the necessary intention indeed lacking? If for Baptism the *intentio implicita* suffices, then the *intentio implicita* can suffice also for the Sacrament of Penance. This *intentio implicita* is included in the sincere will to do everything that God has ordained for attaining salvation. As regards the *actus poenitentis,* for the validity of the Sacrament is sufficient a *confessio*

generica; it will not be difficult to induce a dying heretic to confess himself in general as sinner and to confidently ask God's forgiveness, but if this is done, then we have the *confessio* and *contritio,* requisite for the validity of absolution.

Nor does *defectus fidei Catholicae* offer a difficulty, for a *haereticus materialis,* one who is in good faith, may really be possessed of the *fides supernaturalis,* the faith necessary for justification. Should some one object, further, that the *ordinatio actuum poenitentis* is lacking, meaning the *actus poenitentis* (namely *confessio, contritio*) were not obtained in *ordine ad accipiendam absolutionem,* the reply is that an *ordinatio implicita* is present included in the will to do what God requires of us, and this *ordinatio* suffices.

Moreover, theologians teach, almost universally, that absolution *sub conditione* may be given to a dying *haereticus materialis,* bereft of consciousness. But why may it be given to such a one? Certainly not because it is presumed that God will instruct him by interior enlightenment of the necessity of the Sacrament of Penance, and that then this dying man, in *ordine ad accipiendam absolutionem,* will make the *actus.* Such supposition does not belong to the common order of things, but to the province of miracles. We can not argue, therefore, on any such presumption. The reason can, therefore, only be because theologians believe that the *actus poenitentis* may be presumed in the manner mentioned, *i. e., in illa forma generica, quae absolute loquendo ad validitatum Sacramenti* suffice.

Resp. ad. II. That Cajus acted rightly follows from the above. But as he appeared to have doubt also about the validity of the Baptism, he should have administered Baptism privately *sub conditione.* For this purpose it would have sufficed, for instance, to wet the patient's forehead with a cloth and pronounce the *forma.* It was also quite correct for the priest to keep secret the granting

of absolution and to allow the Protestant form of burial; he could not have prevented the latter.

We would like to state some principles that will apply in practical procedure.

1. In the case of a dying non-Catholic already unconscious, absolution may be given *sub conditione.* This will apply, at all events if the person is a *haereticus materialis.* But as it is impossible for us to say with certainty that a particular case is *bona* or *mala fide,* we may therefore give the *absolutio conditionatim* to *all* unconscious, dying heretics, excepting only those, *de quorum indispositione constat.* Theologically the granting of absolution is justified by the fact that one accepts the *anxia respiratio, ictus oculorum . . .* as an outward sign of the inner disposition, and of the *desiderium (implicitum) accipiendi absolutionem,* or that one concludes that through the *bona fides externe manifestata,* there has shown itself outwardly the *desiderium recipiendi necessaria salutis media;* this *desiderium* is synonymous with the *desiderium implicitum Sacramenti.*

2. In the case of a dying non-Catholic, still conscious, if prudence forbids urging him to join the Church, we should above all incite in him acts of faith, hope and charity, and of perfect contrition; we should induce him to declare himself a sinner before God, and to consent that the priest help him, as far as possible, to attain salvation. Then he may be given absolution *sub conditione.*

Is there a doubt as to whether the sick man has been baptized validly, then, in every case, the *absolutio conditionata* must be preceded by *baptismus conditionatus* as well.

IGN. RIEDER, D.D.

LXX. ORDO SEPELIENDI PARVULOS—ADULTOS

In a certain parish there died recently, of a contagious disease, two boys belonging to a prominent family, one in his fifth, the other in his ninth year. One funeral was held for both, *sub uno* according to the *ordo sepeliendi parvulos,* in white. Later a debate arose over this, as it was maintained that the younger of the boys should have been interred according to the *ordo sepeliendi parvulos,* but the other according to the *ordo sep. adultos.* On the other hand, the pastor's action was defended on the following special reasons:

1. The older boy, though he attended school, had not yet received the Sacraments of Penance and Holy Eucharist. In that parish it was the universal custom to bury such children according to the *ordo sep. parvulos.*

2. If the pastor had caused the bodies to be buried separately, and to be taken separately to the cemetery, he would have unnecessarily increased the parents' grief.

To elucidate this case we will put the following questions:

1. When is, according to ecclesiastical precept, the *ordo sep. parvulos* to be applied, and when the *ordo sep. adultos*?

2. Is the fact that the Sacraments of Penance and the Eucharist have not been received, a reason for deviating from this precept?

3. What should the pastor have properly done in this case?

Ad. 1. The *ordo sep. parvulos* is only applicable to baptized children who die before attaining the use of reason; in the case of all others the *ordo sep. adultos* is to be followed. This is evident from the *Rit. Rom.* and also from the wording of these two funeral rites.

The *Rit. Rom.* explains in the Rubrics on the *ordo sep. parvulos* how the word *parvuli* is to be understood. *Cum igitur infans vel*

puer baptizatus defunctus fuerit ante usum rationis, etc. *Parvuli,* therefore, are children who have not attained the use of reason, and *adulti* those who have attained the use of reason, whether they are grown up or not. In this sense these terms also occur in other ecclesiastical regulations, as, for instance, in the *ordo baptismi parvulorum-adultorum.* The *ordo sep. parvulos* refers to all those dying before the years of discretion, the *ordo sep. adultos* to all those dying after attaining them.

This is undoubtedly evident also from the character of the funeral rites. The *ordo sep. parvulos* is of a joyful character, as is manifest in the selection of the psalms (*Laudate pueri; Domini est terra; Laudate Dominum de coelis*); the wording of the orations, which pray, not for the child, but for the survivors, that the latter may one day participate in the same happiness; the white color: the color of rejoicing. This rite is evidently befitting only for those that have preserved the grace of Baptism pure and undefiled; those that were incapable of the least actual sin, and who, therefore, were immediately admitted to the vision of God. And that is positively the case only of those children who die before attaining the use of reason.

The *ordo sep. adultos,* on the contrary, expresses sorrow at human sinfulness, fear of divine justice, and turns to God for mercy and grace to the departed. Hence the black garb, the Psalms *Miserere,* and *De Profundis,* and the corresponding sense of the orations. This funeral rite is, therefore, to be used not only for adults, but also for children who have reached the years of discretion, who, therefore, are capable of actual sin, and of whom one can not be quite certain that at their death they have nothing to atone for.

Ex communiter contingentibus it is accepted that man at the completion of his seventh year attains the use of reason. Hence it must be the general rule that all who have passed their seventh year must

be buried according to the *ordo sep. adultos.* The custom of burying according to the *ordo sep. parvulos* children even after reaching the years of discretion, is in direct opposition to the ecclesiastical precepts, and to the purport of the prayers, and it does a great injustice to the children concerned, as it deprives them of the intercession which perhaps they greatly need. This custom therefore is an improper custom, and is to be abolished.

There must be no departure from this rule even if a child who has passed this age seems to have preserved his innocence; outward appearances are often deceiving, and the same argument might be urged for some grown persons (S. C. R., August 31, 1872). On the other hand there are younger children in whom wickedness exceeds their years. Such cases, in regard to the rite to be followed, are only to be considered if notorious. *Perpetuo amentes* over seven years of age are interred like children under seven years of age (De Herdt, S. Lit. Praxis, I, III, n. 268).

Ad. 2. The choice of the burial rite depends, therefore, in first place and chiefly, upon the attainment or non-attainment of the use of reason. As in our case the older boy had reached the years of discretion, he should by all means have been buried according to the *Ordo sep. adultos.* The circumstance that outside of Baptism he had not received any Sacraments, is no excuse for the pastor's procedure, but might imply an accusation against him, if, namely, his negligence was the cause of the boy dying without receiving the Sacraments. Every person able to distinguish between right and wrong, and therefore capable of committing sin, can and should, in danger of death, receive the last Sacraments, even if otherwise First Confession and Holy Communion are sometimes postponed until the ninth or tenth year. This is evident from divine and ecclesiastical precepts concerning the reception of the Sacraments; it would be

superfluous to quote here authorities in this matter.* They all agree that a priest commits grievous sin if he does not administer the last Sacraments, in danger of death, to children, who have attained the use of reason, on the excuse that they had never previously received the Sacraments of Penance or of the Eucharist, or because they have not been fully instructed.

Hence to say: He who has not received the Sacraments of Penance and of the Eucharist is to be buried according to the *ordo sep. parvulos* is not correct, but, He who is *not capable* of receiving the Sacraments. He who *is* capable of receiving the Sacraments must be interred according to the *ordo sep. adultos.* As this capability is contingent upon the use of reason we may amplify the rule given above and say: All those who have attained the use of reason, and have, or might have, received the last Sacraments, are to be buried according to the *ordo sep. adultos.*

Ad. 3. (a) The pastor after proper preparation should have given the last Sacraments and general absolution to the older boy. A complete instruction for Confession and Communion is not necessary under the circumstances, only the knowledge of the truths which *necessitate medii* must be believed explicitly. Hereupon he should have helped the boy to examine his conscience, as far as possible, and should have been especially solicitous for a good disposition by exciting acts of contrition, faith, hope and charity. This suffices for a valid and worthy reception of sacramental absolution and therefore for the reception of Extreme Unction. Whenever these two Sacraments are administered, general absolution should also be given. Furthermore if the child can distinguish the Holy Eucharist from ordinary material food, and there is no irreverence to be feared, he may also receive the Holy Viaticum.

* Note, see p. 173.

(b) The older boy should have been buried according to the *ordo sep. adultos,* the younger one according to the *ordo sep. parvulos.* Therefore the blessings at the house, in the church and at the cemetery should have taken place successively. No one could expect, however, that each body should be taken separately from the house to the church and thence to the cemetery, for that would have increased needlessly the parents' grief. A separate rite was therefore not possible in this particular part of the burial rite, it had to be performed according to one ritual and that should have been the *ordo sep. adultos.* This is the more important and necessary one, and it would have been more in accord with the sentiments of the parents and all those present.

LAMBERT STUDENY, D.D.

LXXI. TWO CASES OF RESTITUTION

I. Cajus, a wealthy man, has three sons, one of whom, Titus, is leading a dissolute life, and has incurred debts to money lenders. Unable to pay them, he leaves the country. The creditors expect to be indemnified, upon the death of Cajus, from the share in the paternal fortune which must fall to Titus. But Cajus is determined to prevent that any part of his property should fall into the hands of these money lenders, and sells his entire property to the two other sons. He sends Titus his legal share in cash, which the latter soon squanders, so that there now remains no prospect for the money lenders of ever getting their money. 1. What obligations have Titus and Cajus? 2. Was Cajus right in acting thus, with the intention of doing the money lenders out of their due?

Answer.—1. Titus is evidently obliged to make restitution. He who incurs debts must pay them. There is only one chance of escape: if, namely, Titus is a minor, and if a positive law exists for the *bonum commune*—as is contained, for instance, in the *jus Romanum*—which prohibits to claim from minors the payment of debts incurred in an extravagant manner. In such case Titus may refuse payment, if he has committed no fraud. But if such law does not exist, or if Titus is not a minor, there remains for him the obligation to make restitution. Of course he who has nothing can not make restitution, and thus Titus would be released. Must the father in this matter assume responsibility for the son? In his capacity as father certainly not. Yet Cajus appears to be the cause for the loss to the money lenders, because in order that his property should not fall into their hands he sold it to his other sons. To this no objection can be made. This sale does not render it impossible

for Titus to pay his debts. On the contrary Titus now receives his lawful share and may pay if he so wishes. The father foresaw of course that Titus would not pay, and he suffered the loss to fall upon the money lenders. In this way one may, under certain circumstances, sin against charity, but against justice only if he is *vi muneris* to prevent damage to a third party. Who, however, can assert that Cajus was bound *vi muneris* to prevent a loss to the money lenders? Cajus has, therefore, committed no wrong toward the money lenders and need not make restitution.

Answer.—2. This question demands a new presumption. Cajus intended not only to save his property but to do the money lenders out of their due. He sells his property therefore to his two sons, and pays Titus his share out of the price received. The latter, of course, squanders this money. The father calculated correctly and the lenders lose their money. Did the father thus wrong these people? At first glance the answer seems to depend upon whether an intention can make unjust an act of itself just, and whether there is incurred responsibility for the consequences. Yet this is only so apparently. For the question about the influence of the intention upon a just act presupposes, and must presuppose, that this act is *causa damni;* it must be ascertained whether through the intention the *causa iusta* became a *causa iniusta.* This necessary presumption is lacking in our case; for Cajus through paying Titus his share, even with the purpose of doing the money lenders out of their due, is not the *causa,* but only the *occasio damni,* consequently free from the duty of restitution. Thus the theory; but in actual life the circumstances are often deciding. It is hardly conceivable that Cajus, determined to outwit the money lenders, did not also in one or another way, through his counsel, influence his son's unjust conduct. If this is the case—from the statement of the *casus* this is not evident—

then Cajus must assume the consequences of his *consilium iniustum*, and make restitution; of course only in second place.

II. Frank lends to Anthony, who is financially embarrassed, the sum of one thousand dollars without note of hand or security. Subsequently Anthony gives his daughter in marriage to Caius, making over to him in the marriage contract everything he possesses, and saying nothing of the one thousand dollars which he owes to Frank. After the death of Frank his heirs demand of Caius, who is in good circumstances, the payment of the thousand dollars, because Anthony had transferred his entire property to him. Caius, however, knowing nothing of this debt, affirms in court, upon oath, that he did not make this loan, whereupon the court decides against the heirs of Frank. 1. Must Caius make restitution for the debt? 2. Must Caius pay the costs of the suit?

Answer.—1. We presume that Anthony at the time he made the settlement possessed nothing outside of his real estate; we suppose further that he not now possesses anything, that he is not even in a position to earn anything and thus pay the debt.

Under these suppositions we say: Caius must give up the thousand dollars. But why? To establish this obligation there are several ways of arguing; we prefer the following: Anthony borrowed money of Frank. A debtor does wrong if he does not pay his debts, and also if he voluntarily places himself in a position that makes it impossible for him to pay the debt. Anthony did the latter by transferring to his son-in-law everything that he possessed. Hence Anthony must make good this wrong, as far as possible. There remains nothing for him to do but to reclaim from Caius that portion of his property needed to cover his liability, presuming that he can reclaim it. This he has the right to do, for the donation was in that part unlawful. The part, namely, which Anthony needs to pay his

debts, he could not lawfully give away, particularly not if he wished in this way to defraud Frank, or his heirs, of their due. So are unlawful, according to all moralists, donations made by a merchant after declaring bankruptcy. The profane law expresses itself in the same sense, and tolerates no donation where the money is needed to pay debts. The donation therefore in that part was invalid, consequently Anthony is obliged to lay the matter before his son-in-law, and demand the return of the one thousand dollars. In regard to this obligation of Anthony, it is Caius' duty that he believe his father-in-law, for he has no reason to doubt; and furthermore that he pay over the demanded amount, for that which Anthony could not lawfully give, Caius can not lawfully retain.

If it be too difficult for Caius to pay the sum all at once, he is to be allowed to pay the debt in partial payments. We must concede, even, that if Caius or rather his wife, for the time required by law, should have regarded the entire donation *bona fide* as her property, nothing seems to stand in the way of declaring lawfully that the claim is outlawed and that Caius may retain the one thousand dollars.

Answer.—2. Caius has never heard from a credible source, *i. e.*, from his father-in-law, anything concerning the entire affair. He was not bound to credit the statement of the heirs and could rightly let suit be brought. Caius in conscience is therefore not answerable for the costs of the legal proceedings. Let us, however, suppose that Caius in the course of the suit, before taking oath, had been positively enlightened concerning the point at issue. He could then not have taken the oath, and was bound to pay over the one thousand dollars. If he did not do this, then he would also have to pay the costs for the continuation of the suit.

FRANZ HILGERS.

LXXII. MEMBERS OF RELIGIOUS ORDERS AND PERSONAL PROPERTY

The following case is presented for solution: Cornelius, now a secular priest, but formerly belonging to an order, *sic confitetur:* While still in the order I was called one day to the deathbed of a woman whose regular confessor I had been. Upon having confessed she presented to me, as a token of gratitude for my long years of endeavor with her, a bank book for six thousand dollars. Even then I had the intention of leaving eventually the order and so I asked her whether I might keep the money for my own use for the event of my leaving the order. She answered: I do not give this money to the order, but to you personally; do with it as you will, keep it for the time when you will have left the order. Accordingly I kept the bank book, without the knowledge of my superiors. Three years after that I left the order, and drew the six thousand dollars, together with interest. Since, however, I belonged to a rigid order with solemn profession, and had taken the vow of poverty, I feel worried and beg you, as my confessor, to advise me whether I may keep the money. To decide this case we must answer the following questions:

1. May a religious, in anticipation of the fact that he will positively obtain permission to leave the order, put away some means (as in our case) for his future use?

2. If this were not lawful in general, would our case perhaps form an exception, the benefactress having expressly declared that she presented the bank book to Cornelius, and not to the order?

3. If his (Cornelius') action was sinful, was it an offense against poverty, or also against justice?

4. Has the sin against justice ceased through the dispensation

from the vows, and may Cornelius now keep the money in good conscience?

5. What is to be done in case of death of this ex-religious? Must the money revert to the relatives, or heirs, of the benefactress, or to the order, or may Cornelius dispose of it as he pleases?

I reply to the questions as follows:

Ad. 1. No; a religious, before his dismissal, must certainly not possess himself of anything to make use of it after his dismissal; for he is *hic et nunc* still fully bound by the vows of holy poverty.

Ad. 2. As the benefactress expressly agreed that the presentation take place only *pro tunc,* not at once, it appears to me that the religious may have meanwhile considered himself as *depositarius;* this of itself is not against poverty, but may certainly be against the rules of the order; whether *venialiter* or *graviter,* depends upon rules and circumstances.

Ad. 3. As the order had obtained no right to the amount, and the benefactress having renounced her title to it, Cornelius does not violate justice, nor poverty *per se* (except perhaps *secundum desiderium et actum internum,* if he *per fas et nefas,* without a reason valid before God, seeks release from his vows); he may have violated the rules of the order, or also the obedience, perhaps grievously. In this answer, denying the violation of poverty, I am presuming that Cornelius really had reason and prospect to be released from the vow of poverty. Compare, however, my answer *Ad.* 5.

Ad. 4. This answer is given in the preceding argument.

Ad. 5. The money is not to be given to the heirs of the benefactress, as she has invalidated her and their right to it by voluntary cession. Nor is it to be given to the order, as, according to the will of the benefactress, it has no claim to it. Still it does not follow that Cornelius can freely dispose of it. In secularizing a professed

of solemn vows there remains generally intact the substance of the vows; the secularized is and remains disqualified from possessing property, he may have, and acquire, property *ad usum suum, quantum eis ad sustentationem indiget;* whatever is over and above that he must in his lifetime, or *mortis causa,* give up to the purposes mentioned in the Indult of Secularization. If a certain work is mentioned to which the legacy of the secularized religious should revert, then all his property must be so disposed of; if, however, the Indult of Secularization gives the right of free disposal, *ad pias causas,* then the secularized religious in regard to this money may freely choose among the *piae causae.*

AUG. LEHMKUHL, S.J.

LXXIII. REPETITION OF EXTREME UNCTION DURING THE SAME ILLNESS

A Catholic, for a long time estranged from his religion, who has hated the priests and used blasphemous language, suffered a stroke of apoplexy. He remained unconscious for an entire day. In this extremity it was thought best to give him absolution and Extreme Unction. Later the patient returned to consciousness, without being able to speak. He violently protested against the exhortations of the priest and of the good sister in attendance, once or twice he even attempted to spit upon the crucifix held before him. Meantime many prayers were being offered for him in the hospital where he had been taken. Suddenly he gave unmistakable signs of conversion; he kissed the crucifix with devotion, and listened willingly to the priest's words; he repeatedly tried to make the sign of the Cross, and endeavored to utter the Holy Name, as well as other invocations. The chaplain rejoiced at this sudden change of mind and administered Extreme Unction once more. For this, however, he was later severely censured by a confrater, who pointed out that Extreme Unction must not be repeated in the same illness. Who was right?

The chaplain referred, in proof of his correctness, to the lack, on the part of the recipient, of the intention requisite for the validity of a Sacrament. As this intention on part of the subject was, in fact, not present at the first administration, the repetition of Extreme Unction after the patient's conversion was perfectly justified. The action of this unfortunate man before his conversion proved his aversion for any religious act, and consequently the absence of the intention requisite for the validity of the Sacrament.

The reasons which the confrater cited against this view are not valid, as their closer examination will show.

1. Extreme Unction may only be administered once in the same illness. In this connection it may be said that in our case it was really only given once, as the first administration proved to be invalid.

2. But this unfortunate patient was already *sacro oleo unctus,* and all prayers prescribed by the Church had been said over him. The invalidity of this objection is obvious. Some one may be *aqua ablutus,* or *chrismate unctus,* and yet the particular Baptism, or Confirmation, may be invalid, and he is neither baptized nor confirmed, if in administering the Sacrament an essential defect occurred. Lack of intention, on part of the administrator or recipient, is such a defect in the essence of the Sacrament.

3. But Extreme Unction is often administered to an unconscious person who has led an unchristian life, has not received the Sacraments for a long time, nor manifested a desire now, and yet no solicitude is had for the validity of the Sacrament in such cases. From this it may be inferred only that in many cases the administration of this Sacrament is invalid. Following the principle *in extremis extrema sunt tentanda* the Church goes as far as possible in granting Extreme Unction, which for so many poor souls may be their only salvation. For the recipient of the Sacrament the *intentio habitualis* is requisite, in the case of unconscious persons the Church contents herself with the *intentio interpretativa; i. e.,* the Church explains: if this patient *hic et nunc* could express his intention, he would desire the Sacrament, or: if he were conscious he would request Extreme Unction. If it is proved that this presumption was an erroneous one, the administration must be regarded

as invalid. In our case we have in the patient's behavior sufficient proof that the presumption this unconscious patient would, if in his senses, wish to receive the Sacraments, was erroneous. His demeanor denoted sufficiently that he was averse to receiving the Sacraments. On the part of this subject, therefore, all intention was lacking; it was administered to him against his will, against his intention.

4. But let us suppose the case—which often enough happens in deathbed conversions—that a person estranged from religion has received Extreme Unction in the state of unconsciousness; subsequently he comes to and gives evidence of a religious disposition, then in continued danger of death Extreme Unction is not again administered; and why not? Because in such a case the *intentio interpretativa,* upon the presumption of which the Sacrament was given him, was lawful and the contrary not in evidence. If, however, the contrary is proved, as in our case, if it is ascertained that the good will presumed and the *intentio interpretativa* was *not* present, then the matter is quite different, and another administration of Extreme Unction, even in the same illness, is certainly in order if the refractory patient afterward shows his willingness.

5. But does not theology teach of a *sacramentum informe,* that it may become *sacramentum formatum* and that the sacramental grace may be imparted later to a *hic et nunc* ill-disposed recipient, as soon as the *indispositio* is lifted and the *obex gratiae* removed? A *sacramentum informe* can, it is true, become in such manner a *sacramentum formatum, the validity of the same supposed.* Sacraments *invalidly* administered can not be made valid. To administer a Sacrament to a subject who has no intention, does not mean merely to give it to an unworthy person, but it is giving it to a person incapable of receiving it.

As the case stands we can not perceive how the chaplain was liable to censure; the reasons advanced by his confrater against the second administration of Extreme Unction are not valid.

JOHN ACKERL, D.D.

LXXIV. THE IMPEDIMENT OF CLANDESTINITY

The following somewhat complicated marriage case was laid by an episcopal curia before the *Sacred Officium* for decision.

The answer given by the *Congregatio S. Officii, Seu Inquisitionis,* differs somewhat from the opinions of the consulted theologians, and is, one might say, astonishingly simple. We give the case according to the *Analecta ecclesiastica.*

Caius, a Catholic of the diocese of N., contracted, thirteen years ago and in the town of A., where the Tridentinum has been promulgated, a marriage with Titia before a non-Catholic minister, and had with her several children. Tortured by remorse, he wished to re-validate this marriage, but a great obstacle stands in the way. Titia had, twenty-five years ago, been married to a Lutheran, Sempronius, which marriage, however, had been dissolved in court fourteen years ago. Titia and Sempronius, both non-Catholics, lived at that time in the town B., where the *Concilium Tridentinum* had been published at a time when a separate Protestant community already existed, and they arranged in this town everything necessary for marriage; the ceremony, however, did not take place in B., but in the town of C., before the, for this act, delegated non-Catholic minister; immediately after the wedding they returned to B. and there lived peacefully, becoming the parents of two children. Their happiness was destroyed by the husband's faithlessness, and the court granted divorce on this ground. It is to be noted that in the town B., where the *consensus* was given, the *Tridentinum* had been published at a time when no Protestant community existed there. Caius now asks that the marriage between Titia and Sempronius be

declared invalid on the impediment of clandestinity, thus making it possible for him to contract marriage with Titia.

As we see it is a matter here of two marriages. The marriage between Caius and Titia is without doubt invalid, because of clandestinity, and for this reason Caius wishes re-validation. To this re-validation is opposed the first marriage between Titia and Sempronius, which, presuming that it was valid, could not be dissolved by the court. The question, therefore, is: Was the marriage between Titia and Sempronius valid or not?

In the episcopal curia opinions were divided. The majority of counselors held the marriage to be invalid on account of the obstacle of clandestinity; it had been contracted in a place where the *Decretum Tametsi* was in force, but before a non-Catholic minister. Furthermore, they claimed that: in this case the decree of the *Sacred Officium,* of June 5, 1889, finds application, according to which a marriage contracted clandestinely in a locality where the *Tridentinum* exists in force, can, setting aside other prescribed formalities, be pronounced invalid by the ordinary, without a second decision being necessary.

Other diocesan counselors held for various reasons that the marriage in question was valid.

The *Theologus capitularis* gave his *votum* as follows: 1. The first question is, was the marriage between Sempronius and Titia valid, or not? 2. If undoubtedly invalid, then of course the *decretum S. Officii,* of June 5, 1889, finds application and episcopal curia can definitely pronounce the invalidity. 3. I hold, in opposition to others, that for a certainty the marriage in the town C. was contracted invalidly, because in that place the *Decretum Tametsi* was published, and one must maintain the principle: *Locus regit actum.* 4. Because, however, *non servata forma Tridentina* they could in

B. have contracted the marriage validly, the question is whether they have not really contracted the marriage upon their return there according to the law: *consensum maritalem mutuum de praesenti manifestatum matrimonium facere.* The *Jus Decretalium,* which is based upon the natural law, still exists in force in all places where the *Tridentinum* has not been published. This *consensus* is not dependent upon a verbal declaration, and GASPARRI therefore writes: *"Quaenam signa aut facta consensum satis exprimant, non potest regula generali indicari. Copulam carnalem, in nonnullis circumstantiis habitam, satis exprimere maritalem consensum, alias declaravimus"* (Tract. Can. de Matr., n. 831).

From undoubted facts the marriage between Sempronius and Titia appears valid. We reason thus: the two gave their consent before the non-Catholic minister in the town C., where the *Tridentinum* existed. This consent was of course invalid, and for this reason the marriage contracted in that place was likewise invalid, but solely on account of clandestinity, not on account of lack of *consensus.* Then they returned to their home in the town B., where they were free from the Tridentine law. The *consensus* still continued, because on their return they considered themselves married, lived a long time in peace and reared children, certainly not *affectu fornicario,* which would have to be proved, but *animo maritali.* Of course *non concubitus sed consensus facit nuptias.* It is probable that they gave this consent, by word or sign, upon their return, but it is certain that this consent found sufficient expression *eo momento, quo animo maritali in urbe B. prima vice copulam carnalem habuerunt.* The interior marriage consent was present, because they believed themselves wedded, the exterior sign of the *consensus* was added through the *copula;* therefore a valid clandestine marriage

was contracted. To this argument can not be opposed the decree *Consensus mutuus* of Leo XIII, February 15, 1892. Through this decree only the previously existing *praesumptio iuris et de iure* is removed, namely, the *praesumptio: valida sponsalia per copulam carnalem subsecutam, affectu maritali habitam, in matrimonium validum transire.*

The Pope by this decree did not in the least wish to abolish clandestine marriages in territories where the *Tridentinum* does not exist; nor did he desire to deprive in these territories couples of the possibility *animo maritali copulam habendi et matrimonium contrahendi.* In individual cases, therefore, it is to be ascertained whether the betrothed *consensu maritali copulam habuerint necne.* In our case a moral certainty is present that Sempronius and Titia upon returning to B. *affectu maritali copulam habuerint.* Hence all conditions are present for a valid marriage; the intrinsic *consensus,* which certainly continued, expressed exteriorly by the *copula;* likewise the lack of any obstacle. Therefore they contracted a valid marriage; at the very least it is not evident that the marriage was an invalid one.

The *Defensor Matrimonii* held as follows: Sempronius and Titia had their domicile at B., where the *Conc. Tridentinum* was promulgated, but at a time when at that place there was a separate Protestant community. Although Reiffenstuel is of the opinion that in such localities the Tridentine law binds Protestants, this opinion is now abandoned, and the Congregation of the Council has repeatedly recognized such marriages as valid. Sempronius and Titia, therefore, might have contracted the marriage in B. *non servata forma Tridentina.* As a matter of fact the wedding took place at C., where a Protestant community had existed for only about sixty years; they returned to B. and lived peacefully for several

years. For validity, as also for invalidity, there seem to be weighty grounds.

A. Reasons for the validity:

1. Many authors have regarded all Protestant marriages as valid, even though the Tridentine form has not been observed (Compare AICHNER, J. Eccl. (edit. 7), p. 664; and BENEDICT XIV, de Synodo dioec., I, VI, c. 6, n. 4).

2. At any rate Sempronius and Titia could in B. *non servata forma Tridentina* validly contract the marriage *solo consensu maritali mutuo expresso;* this could take place also *per copulam maritali affectu habitam.* The *Defensor Matrimonii* alludes here to the argument which the *Theologus capitularis* emphasizes.

3. *Lex Tridentina est personalis et localis; quatenus est personalis* Sempronius and Titia were unhampered! inasmuch as it is *localis,* there occur exceptions, as a pastor may marry his parishioners in a locality where they have not their domicile. It appears then that Sempronius and Titia could contract their marriage in C.

4. There is the principle: No one can be obliged to the impossible. It was impossible for both to go to a Catholic priest. Of course this *impossibilitas* must exist for the community, not merely for the individual. For it is a matter of a *lex irritans,* which considers the *incommodum communitatis, non autem personae.*

B. Reasons for the invalidity:

1. The marriage in C. was evidently invalid, because the *Tridentinum* existed there as a law, binding also for Protestants. The *lex tridentina est localis et personalis;* now if Sempronius and Titia could contract the marriage in B. *non servata forma Tridentina,* they could not do so in C. *quia locus regit actum.* This law admits of no exception because it is a *lex irritans.*

2. It can not be urged that the marriage was valid because con-

summated in B. The consent from the very beginning was invalid and would not become valid *mera copula carnali.* Both believed they had been married, and in B. did not renew the consent, neither expressly nor through the consummation of their marriage. At any rate, the *Defensor* concludes, the solution is not evident, and hence the case should be laid before the Apostolic See.

The answer of the *Congregatio S. Officii, Seu Inquisitionis,* was as follows:

Illustrissime et Reverendissime Domine!

Litteris datis die 27 Aprilis h. a. Amplitudo Tua sequentia dubia proponebat:

1. *Utrum matrimonium Titia cum Sempronio coram ministro acatholico in urbe C. initum, in urbe B. praeparatum et continuatum, constet firmum, an possit ex capite clandestinitatis irritum declarari a iudice ecclesiastico?*

2. *An possit Caius catholicus, facta prius tali declaratione, cum eadem Titia acatholica, ex qua iam duos genuit liberos, matrimonium legitimum, servatis servandis, in facie Ecclesiae contrahere?*

Res delata est ad Emmos. D.D., Cardinales una mecum Inquisitores generales, qui in Congregatione generali habita in fer. IV die 29 Julii respondendum decreverunt:

Ad. 1. *Matrimonium in casu, omnibus consideratis, esse nullum; modo constet per iuramentum a muliere praestandum, consensum (scientibus sponsis nullitatem prioris consensus) non fuisse renovatum in loco, ubi Tridentinum non viget.*

Ad. 2. *Constito, uti supra, de libertate mulieris quoad eius matrimonium cum Caio catholico, curet prius R. P. D. Episcopus, ut ipsa mulier convertatur; sin minus, suppl. Sanctissimo pro dispensatione super impedimento mixtae religionis, praeviis in Curia cautionibus*

et praevia quoad virum catholicum absolutione a censuris propter attentatum coram ministro haeretico matrimonium.

Adprobata a Sanctissimo D. N. hac Emorum Patrum resolutione sequenti feria VI. die 31 dicti, transmitto ad Ampl. Tuam heic inclusum relativum rescriptum atque interim omnia fausta Tibi a Domino adprecor.

Amplitudinis Tuae

uti frater

Romae, 16 Augusti, 1896. L. M. Card. Parocchi.

In the letter referred to was contained the faculty *dispensandi super impedimentum mixtae religionis et absolvendi Caium a censuris.*

We would add the following remarks:

1. As is clear from the decision, the *Congregatio S. Off.* regarded the marriage contracted in C. as invalid. A new proof that in localities where the *Tridentinum* was proclaimed at a time when no Protestant community there existed, the Protestants were bound by the *lex Tridentina.* Even the objection that Sempronius and Titia could not possibly go to a Catholic priest is not taken into consideration, because it is a question of *lex irritans,* which admits of no exception *per epikiam.* Note also: the marriage in C. was invalid although the couple came from B., where the *Tridentinum* did not exist for them. Therefore Lehmkuhl (Theol. Moral, II, n. 780 nota) is quite correct when he objects to Carriere's opinion, who maintains: *"probabilius valere matrimonium eorum, qui in loco, ubi lex Trid. non vigeat, habitantes, sed peregre existentes in loco, ubi vigeat, contrahant."*

2. Not even by the consummation of the marriage in B. *per copulam* was the same rendered valid *"Consensus enim facit matrimonium*

non copula." This *consensus* was from the very beginning invalid *et non firmatur tractu temporis, quod de iuri non subsistit.* They consummated the marriage in the false presumption that they had been married, not to contract the marriage. This defeats the clever interpretation of the *Theologus capitularis.*

3. The two might have contracted a clandestine marriage in the town B.; for the *Theologus capitularis* was correct in maintaining that through the decree *Consensus mutuus* only the *matrimonium praesumtum* is abrogated, but not the *matrimonium clandestinum,* for localities where the *Tridentinum* does not exist. For this reason the *Congregatio* requires from Titia the oath that she never expressly renewed the consent in B., knowing that the consent given in C. had been invalid.

The decision of the *S. Congregatio* elucidates various mooted points and is a guide for the decision of similar cases.

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