

solummodo rebus licentiam eis alienandi, aut relinquendi quibus voluerint, damus quas ante Episcopatum probantur habuisse: post Episcopatum vero, quæ ex genere sibi conjunctæ ad eos devolutæ sunt, quibus ab intestato usque ad quartum gradum succedere poterunt. *Nov. 131. cap. 13.*

‘ We must distinguish in these Laws of *Justitiam*, that which he ordained in them, that is not in use with us, from that which they contain that is agreeable to the spirit and intention of the Church, and that is in use at all times, and which was the foundation of the whole Tenour and Disposition of these Laws. He forbade the promoting to the Office of a Bishop Persons who had Children or Grand children; which was founded on the two Considerations explained in the first of these two Laws: one, that the domestick Care for Children took up the time necessary for the Episcopal Functions; and the other, to prevent the Goods that were destined for the Church, from being diverted to the uses of the Family of him who had the management and distribution of them. And these Laws enacted farther, that the Bishops who were the dispensers of the Goods of the Church, should not be at liberty to dispose of their own proper Goods, except such as they were possessed of before their advancement to the Episcopal Dignity; and that whatever they should acquire after their said promotion, by what Title soever it were, should belong unalterably to their Church, except what should come to them from their Parents, Uncles, or Brothers upon their dying intestate; this Law presuming that no body would give them any thing, except on account of their Ministry, and with an intention that the Gift should go to the Church: To which the same Emperor added this temperament by the said 131st Novel, c. 13. That they might likewise enjoy as their own the Successions of their Collateral Relations who should die intestate to the fourth degree. These are the dispositions of the said Laws, which are not agreeable to the usage of our time; and the observance of them would be liable to great difficulties, and to many inconveniences. But the motive of these dispositions, which was the good use of the Revenues of the Church according to its intention, subsists still; and tho it is permitted to all Clergymen to possess Goods and to acquire them after their promotion, yet it can never be lawful for them to apply the Goods of the Church that come into their hands to other uses than those which it prescribes, or permits, and to those which are conformable to the intention of the Founders and Benefactors; that is to say, as it is ordained by these very Laws, for the maintenance of the Poor, redemption of Captives, and other works of Charity which may be useful to the Church, and worthy of the sanctity which the Ministers thereof profess, and whose most essential quality is the being free from all Covetousness: for if all Covetousness be forbidden to mere Laymen, what is that Crime in those who have taken God for their Portion, who ought to be a Light and an Example to all others, and who are in possession of the Goods of the Church, only that they may dispense them according to the Spirit and Intention thereof, and with a Heart in which Covetousness has not the predominancy? b

a *Take heed and beware of Covetousness.* Luk. 12. 15.

Sancta Synodus non solum jubet, ut Episcopi modesta suppellectili, & mensa ac frugalibus contenti sint; verum etiam in reliquo vite genere, ac tota eorum domo caveant, ne quid appareat,

quod a sancto hoc instituto sit alienum; quodque non simplicitatem, sed ælulum, ac vanitatum contemptum præ se ferat. Omni vero eis interdicit, ne ex redditibus Ecclesiæ consanguineos, familiaresve suos agere studeant: cum & Apostolorum Canones prohibeant, ne res Ecclesiasticas, quæ Dei sunt, consanguineis doneant, sed si pauperes sint, ut pauperibus distribuant, eas autem non distribuant, nec dissipent illorum causa: imo quam maxime potest, eos sancta Synodus monet, ut omnem humanum hunc erga fratres, nepotes, propinquosque carnis affectum, unde multorum malorum in Ecclesia Seminarium extat, penitus deponant, &c. *Sess. 25. de reform. c. 1.*

‘ What is said in this Text, ought to be understood of all the Ministers of the Church who enjoy Ecclesiastical Revenues, of which they are only the Depositaries.

‘ Quoniam quidquid habent Clerici, pauperum est: & domus illorum omnibus debent esse communes: susceperunt peregrinorum & hospitium invigilare debent. 17. q. 1. c. ult.

*Let your Conversation be without Covetousness; and be content with such things as you have.* Heb. 13. 5.

b *Not Covetous.* 1 Tim. 3. 3.

*They are Shepherds that cannot understand; they all look to their own way, every one for his Gain, from his quarter.* Isa. 56. 11.

*From the least of them even unto the greatest of them, every one is given to Covetousness; and from the Prophet even unto the Priest, every one dealeth falsely.* Jerem. 6. 13.

‘ We have not thought fit to enter here into the question, whether Clergymen possessed of Benefices may with a safe Conscience dispose by Testament, or otherwise, of the fruits of their Benefices, in favour of their Relations; we have only remarked here what the Laws have ordained touching this matter.

‘ We are not to expect to find in the New Testament prohibitions to Ecclesiastical Persons, to make a wrong use of the Goods of the Church. Those who were forbidden to possess any Goods at all, did not stand in need of any such Rule, which is become necessary only since the Discipline of the Church has put into the hands of the Successors of the Apostles and of the Disciples of Jesus Christ, Revenues for their Maintenance, for Alms, and other Works of Piety. But this change hath not made any in the Rule of the dispositions which they ought to have in the Heart; for the changes which the Discipline may make, regard only the external part, and do not dispense with the inward dispositions enjoined by the Law of God in the Gospel. Thus the external manner, of being possess’d of Goods belonging to the Church, does not discharge the Clergy from the Duty of not setting their Hearts upon them, and of making only a good and pious use of them, such as may be the natural effect of a Possession without an inordinate love of Riches. It is in order to promote this pious use of the Goods of the Church, that the Council of Trent ordains expressly that the Ministers of the Church should abstain from all superfluous Expences, and gives the Clergy Directions how they should use the Revenues of the Church.

c *Provide neither Gold, nor Silver, nor Brass in your Purses.* Mat. 23. 5.

See concerning the different Duties of Clergymen, which may be applied to all those mentioned in the preceding Articles, 1 Cor. 3. 9. *Heb. 7. 1, 2, 3, 4, 5. John 25. 16. Mark 3. 13. Numb. 3. 6. Ps. 14.*

2 Chron. 26. 16.

XV.

15. The Duties of Professors of Divinity.

We must reckon in the number of the Duties of Ecclesiasticks which regard the Publick, those of the Professors and Doctors of Divinity, which have been explained in their proper places x.

x See Sect. 2. of the Title of Universities.

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T I T. XI.

Of the Persons whose Condition engages them in the Profession of Arms, and of their Duties.

**W**E must not confound the Subject of this Title with that of the 4th, where we have treated of the Duties of those who are in the Service of the Army. For in that 4th Title mention is made only of the Persons actually in the Service of the War, and of their Duties in that Service, which make up the Military Government; and in this Title we purpose to explain who are the Persons, whose Condition regards the Profession of Arms, whether they serve actually in the War, or whether they be not in actual Service: and this shall be the subject matter of two Sections; the first shall be of the distinctions of those Persons; and the second of their other Duties besides those of Service in the War. So that the subject matter of this Title is altogether different from that of the 4th Title.

S E C T. I.

*Distinction of the Persons.*

The CONTENTS.

1. The right of employing Arms resides in the Person of the Prince.
2. Princes of the Blood.
3. The first Officers who wear Swords, are next to the Princes of the Blood.
4. Knights of the King's Orders.
5. The King's Vassals.
6. Gentlemen.
7. Officers of War, and others who belong to the Profession of Arms.

I.

1 The right of employing Arms re-

**W**E cannot consider the Body of a State without distinguishing in it the Prince who is Head thereof,

and who in that August Rank is infinitely above the most exalted Conditions, which cannot be filled but with his Subjects, seeing he is the only Person in whom God hath placed the fulness of Authority and Power for the Government, and for the dispensation of Justice, together with the force of Arms to make it reign, not only over his own Subjects by the Empire which Justice ought naturally to have over all Mankind, but also by War against Strangers in the cases where this way becomes necessary a. Thus the Prince is the first Person engaged to the Profession of Arms by the Right which puts the use of them into his hands, and which makes him the dispenser of the said use of Arms.

a See Tit. 2. Sect. 2. Art. 2.

II.

It is from this Glory and Grandeur of the Prince that the Glory of those Persons proceeds who have the honour of filling the Ranks which are nearest to his own. Thus, in France, the first of all are the Princes who are the King's Children; and next to them, the other Princes of his Blood. For besides the singular Dignity of so illustrious a Birth, they may succeed to the Crown, as also their Descendants, when it so falls out. And it is by reason of the elevation of this Rank, and of this Birth, which has the same Original with that of the Prince, that, among other marks of Grandeur and Dignity, they have the first share in the Glory of the Arms which God puts into the hands of the Prince. For as he cannot make use of them but by communicating the use of his Right to other Persons, so this Honour regards in the first place and most naturally the Princes of the Blood, who are not engaged in the Ecclesiastical State b.

b The first Rank is that of the Persons whom their Birth unites most nearly to the Prince.

III.

Next to the Princes of the Blood, the first of those who wear Swords, are the great Officers of this Profession; such as the Admiral, the secular Peers, the other Officers of the Crown, and those of the King's Household who belong to this Profession of Arms, the Officers of War whether they serve by Sea or Land, the Governours of Provinces, and of fortified Places c.

c We do not pretend to mark here the Ranks of these Persons, nor even to distinguish their several Offices; for that matter comes not within

sides in the Person of the Prince

2. Princes of the Blood.

3. The first Officers who wear Swords, are next to the Princes of the Blood,

in the design of this Book; this detail may be easily met with elsewhere; and we must only remark, that we have distinguished in the Article the Peers, and other Officers of the Crown, and of the King's Household who wear a Sword. For the Bishops who are Peers, and the great Almoner do not wear it, nor the Chancellor who is an Officer of the Crown.

## IV.

4. *Knights of the King's Orders.*

We must comprehend in the same Order the distinguished Rank of those whom the King honours with the Title of Knights of his Orders, and to whom he gives the particular Badges thereof; which he himself wears on his own Body; and which he gives with this Title to his Children as soon as they are born, giving it to other Persons only out of a particular Consideration of their Services, and as a Remuneration of a Merit worthy of this distinction d.

d. We do not here pretend to explain these several Orders, and their Privileges; and it sufficeth to mark in general this distinction of the Knights of the King's Orders.

## V.

5. *The King's Vassals.*

We ought to distinguish in this Order of the Profession of Arms, the Vassals who have Fiefs of the Crown, Principalities, Duchies, Counties, Marquisates, and other Lands erected into Titles, which have been given, either originally to the present Possessors, or to those from whom the present Possessors derive their Title as a Fief, on condition to pay Homage and Fealty for them to the King; that is to say, to swear Allegiance to him, that they will be always devoted to his Service, according to the different Conditions of the Fiefs: and the same Order takes in likewise Vassals of an inferior Rank, whether they have Fiefs held in chief, or Mesne-Fiefs, which the first Vassals have dismembered from their own, and given away to others on the same Conditions of paying Homage and Fealty for them. Thus all Vassals or under-Vassals who have superior or inferior Fiefs, are the King's Men to serve him in the War, according to the quality of the Fee they hold; and they are bound to yield this Service whenever required to do it by the Prince's Order, which is called in France the Ban and Arrier-Ban e.

e. See the Ordinance of Charles VI. and the other Ordinances relating to the Ban and Arrier-Ban. Every body knows that there are Kingdoms held in Fee, and what is the use of Fees in general; this title is a matter, the detail whereof ought not to be inserted in this Book; for besides that the Rules of this detail

are different according to the Customs of places, the publick Order takes no farther notice of it than what is said in this Article.

## VI.

It is likewise to this Order of the Profession of Arms, that Gentlemen belong; that is to say, those who are Noble by Birth, and to whom this Name properly belongs, and whose Ancestors have deserved by their Services in the War, the distinction which a Patent of Nobility makes among them. And this Quality engages them to serve in the War, according as occasion may require, in the same manner as Vassals, and gives them also divers Privileges. We must place in this Rank of Gentlemen, those who not having this Quality by Birth, have deserved by their Services in the Wars, to be created Noble. And there are likewise some who by the Privileges of their Offices, or for other Causes, are made Noble, and enter into the Condition and Engagements of those who are Gentlemen by their Services in the Wars, or by those of their Ancestors f.

f See the Ordinances cited on the foregoing Article.

## VII.

Lastly, we ought to place in the Order of the Profession of Arms, all Officers of War, Generals, Colonels, Captains, Lieutenants and others; and also the Soldiers, and all Persons whose Functions have relation to the Service of the War by Land or Sea: and this comprehends, besides those who carry Arms, those who serve in the Artillery, in Fortifications, and in all the other Functions of War g.

g All these Persons belong to the Profession of Arms.

## S E C T. II.

*Of the other Duties of the Persons mentioned in this Title, besides those of actual Service in the War, according as these Duties have relation to the publick Order.*

IT is necessary to distinguish, as has been observed in the Preamble of this Title, two sorts of Duties of Persons whom their Condition engages to the Profession of Arms: the first, of the Duties which regard the actual Service in the War; and the second, of some

6. *Gentlemen.*

7. *Officers of War, and others, who belong to the Profession of Arms.*

some other Duties which are different, and do severally belong to the Conditions treated of under this Title. The Duties of the first of these two sorts have been explained in the 4th Title; and those of the second sort shall be the Subject matter of this Section, as has been already observed in the same place.

### The CONTENTS.

1. The first Duty, to serve in the Wars, when commanded.
2. The other Duties different according to the differences of Conditions.
3. Duties of the Princes of the Blood.
4. Vertues of the Princes.
5. A faithful Affection to the Person and Interests of the Prince.
6. Duty of Princes of the Blood who are Members of the Prince's Council.
7. Duty of causing Justice to be administered in their own Lands.
8. Duty of the great Officers concern'd in the Administration of Justice.
9. Duties of Lords of Mannors.
10. Duty of choosing good Officers.
11. Duty to see that Justice be rightly administered.
12. That there be no oppression or vexation in collecting their Dues.
13. To avoid Abuses in the use of the Honorary Rights in the Churches.
14. Gentlemen ought not to be concern'd in Trade, nor farm any of the Lands or Goods belonging to the Church.

#### I.

1. The first Duty, to serve in the Wars, when commanded.

The first Duty common to all, whose distinctions have been explained in the foregoing Section, is that which obliges them to serve in the War, when ever called upon to do it *a*, and there to observe the Rules of the Military Discipline, which have been explained in the 4th Title, according as the said Rules may regard them, whether it be to command, or to obey.

*a* And ye came near unto me every one of you, and said, we will send Men before us, and they shall search us out the Land, and bring us word again by what way we must go up, and into what Cities we shall come. And the saying pleased me well, and I took twelve Men of you, one of a Tribe, &c. Deut. 1. v. 22, &c. 23.

See Judges 7.

See the 4th Title.

#### II.

2. The other Duties different according to

Seeing the other Duties proper to these Persons, regard them differently according to the differences of their Conditions, we must distinguish them

according to their Order by the Articles which follow *b*.

*b* See the following Articles.

#### III.

The Princes of the Blood being the first in Honour and Dignity by their Birth, and by the Rank which their Birth gives them about the Sovereign, this elevation engages them towards the Publick to give to all a good Example by their zeal and fidelity in the Service of the Prince, and the good of the State; and the same Rank makes it a Duty incumbent on them to embrace and even find out occasions where their Protection may be useful, either to the Church, or to the Order of the Government, or for the Administration of Justice to particular Persons; which comprehends the Duty of using the freedom of access they naturally have to the Prince, for acquitting themselves both towards him and towards the Publick, of what may be necessary to be done on their part for the support of Justice and Truth, according to the Rules explained in the third Title.

*c* I will set no wicked thing before mine Eyes; I hate the work of them that turn aside. Psal. 101. 3.

Mine Eyes shall be upon the faithful of the Land, that they may dwell with me: he that walketh in a perfect way, he shall serve me. He that worketh deceit, shall not dwell within my House; he that telleth lies, shall not tarry in my sight. Ps. 101. 6, 7.

See Tit. 3. Sect. 2.

See the Texts quoted on Art. 8. of the same Section.

#### IV.

The distinction of the Rank of Princes ought to distinguish also their Vertues, and especially those the exercise whereof regards some publick good. Thus Liberality, which is a Duty common to all great Men, to do the good which their Conditions may require of them when they have opportunities of exercising this quality, ought to be in Princes a Magnificence, which they ought to dispense according to the Rules of Prudence. Thus Courage and Generosity, which are Vertues common to all Persons on occasions where they may be of use, ought to be in Princes a true Magnanimity *d*.

*d* The Vertues of Princes ought to be proportionable to their Elevation.

When thou goest out to Battle against thine Enemies, and seest Horses and Chariots, and a People more than thou, be not afraid of them: for the Lord thy God is with thee, which brought thee up out of the Land of Egypt. Let not your Hearts faint, fear not and do not tremble; neither be ye terrified because of them. Deut. 20. 1, 2. And there is no discharge in that War. Eccl. 8. 6.

#### V.

the differences of Conditions.

3. Duties of the Princes of the Blood.

4. Vertues of the Princes.



## V.

*c. A faithful Affection to the Person and Interests of the Prince.*

Altho the Princes of the Blood, or their Descendants, may in due time succeed to the Crown, yet seeing they are always in the Rank of Subjects of the Prince, it is an essential Duty incumbent on them to join to an uncorrupted Fidelity which this Rank of Subjects demands, a disinterested Affection and Zeal for the Person and Interests of the Prince, which may be proportionable to the Honour they have of being related to him *e.*

*c.* Among other great Qualities of David which shone in all the Actions of his Life, we cannot but take notice of and admire his Conduct towards Saul, whom he was to succeed in the Government. For on all occasions, and even when Saul was trying all means to destroy him, he gave the greatest Marks of his Respect and Zeal for that ungrateful Prince, and laid hold on all occasions to save his Life.

## VI.

*6. Duty of Princes of the Blood who are Members of the Prince's Council.*

The Princes of the Blood who are Members of the Prince's Council, are bound to the same Duties as others who have that Honour, and especially on such Occasions where Truth or Justice may be concerned, and may stand in need of Protection against the Oppression of Persons who should abuse their Authority, or the Credit they have with the Prince, to hinder the Truth from coming to his knowledge. For in these Cases the Interests of Truth and Justice being the same with those of the Prince, they who have the honour to approach nearest his Person, are singularly obliged by the free Access they have to him, and the Honour they have of being nearly related to his Person, to pay him that important Duty, of acquainting him with the Facts which the Cause of Justice requires he should be informed of, and of embracing the Protection of Justice in a manner worthy of their Rank *f.*

*f.* For by wise Counsel thou shalt make thy War; and in multitude of Counsellors there is Safety. Prov. 24. 6.

How can I my self alone bear your Cumbrance, and your Burden, and your Strife? Take ye wise Men and understanding, and known among your Tribes, and I will make them Rulers over you. And ye answered me, and said, The thing which thou hast spoken is good for us so do. So I took the Chief of your Tribes, Wisemen and known, and made them Heads over you, Captains over thousands, and Captains over Hundreds, and Captains over fifties, and Captains over tens, and Officers among your Tribes. And I charged your Judges at that time, saying, Hear the Causes between your Brethren, and judge righteously between every Man and his Brother, and the Stranger that is with him, &c. Deut. 1. 12, &c.

*Excellent Speech becometh not a Fool, much less do lying Lips a Prince. Prov. 17. 7.*

*See these Duties in Tit. 3. Sect. 2.*

*See Prov. 29. 12. and 20. 18.*

*c.* Altho all these Texts have not a precise relation to this Rule, yet they may all of them be applied to it.

*See the Text cited on Art. 1.*

## VII.

It is likewise an important Duty incumbent on Princes of the Blood, but what is common to them with all great Lords, and others who have Lands with a Jurisdiction thereto annexed, to take care, as shall be explained in the 10th and other following Articles, that the Officers under them administer Justice in their Courts, and that those to whom they entrust the Care of their Rights, whether they be their Domesticks, or Tenants, or others, do not commit any Act of Violence or Oppression; and that on the contrary all who live under their Jurisdictions may feel the Effects of Protection and Authority, which may maintain every one of them in the Possession of their Rights *g.*

*g.* See Art. 10, &c.

*See the Texts cited on Art. 11.*

## VIII.

The Duties of the Officers of the Crown and others, of whom mention has been made in Sect. 1. Art. 3. of this Title, are different according to the different Functions of their Offices. And those among them who are called to assist in the Prince's Council, are also obliged to the Duties explained in Tit. 3. Sect. 2. in so far as the same may concern them. And as for the Functions of their Offices, seeing they have all of them some Jurisdiction, and even those Peers who are Judges of the Affairs in which the Crown is any way concerned, they have for general Rules of their Duties in those Functions the Rules of the Officers of Justice, which shall be explained in the second Book, in so far as they may be applicable to them. And every one of them has moreover for his Rules peculiar to his Office those which are prescribed by the Ordinances in France. Thus the Admiral, and other Officers of the Crown, the Governours of Provinces and of fortified Places, and the Officers of War have their respective Rules prescribed by the Ordinances. And the Knights of the King's Orders have also there the Rules of their Functions, and of their Duties *h.*

*h.* It is a necessary Consequence of Office, and other Employments, to discharge well the Functions thereof.

## IX.

IX.

Duties  
of  
Lords of  
Mannor

Vassals who have Lands erected into Titles, Principalities, Duchies, Counties, Marquises, and all those who hold Lands either immediately or mediately of the Crown, with a Jurisdiction annexed to them, are obliged by this Right of Jurisdiction to several different Duties, which shall be explained in the following Articles. And seeing the Princes of the Blood, the Officers of the Crown, and others mention'd in Sect. 1. Art. 3. have also the same Right of Jurisdiction in their respective Lands, they are also bound to the same Duties.

The right of Jurisdiction implies essentially the general Duty of causing Justice to be administered, and the particular Duties which are the Consequences of this primary Duty.

By the Kings reign, and Princes decree Justice. Prov. 8. 15.

See upon this and the following Articles, the Ordinances of Francis I. in 1535. Art. 5. in 1535. Art. 21. Of Charles VIII. in 1453. Art. 47. Of Francis II. 1560. Of Henry II. 1550. Ordinance of Blois, Art. 65, 66. Of Moulins, Art. 13.

X.

Duty  
of  
Lords of  
Mannor

As those who have Lands with a Jurisdiction annexed to them, have a Right to put in Officers into the places belonging to their Jurisdiction, when they fall void; this Right necessarily implies the Duty of conferring them only on Persons who have both Capacity and Probity sufficient for discharging the Functions thereof. And altho in these Cases the Lords of Mannors who have a Jurisdiction within themselves, have a Right to sell the said Offices, yet that Right is not so absolute but that they are obliged to make a good choice of Persons duly qualified for performing the Functions thereof; and does not extend so far as to leave them at liberty to bestow the said Offices on such as give most for them, if they have not the Qualities necessary for the due Execution of the Office to which they are named. For besides that the Duty of those who have the nomination of Judges, to nominate Persons in all respects duly qualified for the Office, is more antient, more natural, and more essential than their Right to sell the Offices; neither Equity nor good Sense will ever bear that he who has a Right to a Function, for the good of the Publick, should be at liberty to exercise it otherwise than well: which is not to be understood as if all those who have the appointment of Judges, ought to be capable themselves of judging of their Qualities;

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but only that those who are capable of judging, may use their said capacity so as to make a good Choice for the publick good; and that those who are not able of themselves to make a right Judgment of the Persons, may therein take the advice of wise and disinterested Persons.

¶ Altho it be true that the Lords of Mannors who have Courts of Justice within themselves, are not all of them capable of judging of the Qualifications of those whom they appoint to be Judges of the said Courts; and that the Persons named to the said Offices are to be examined by the Judges who are to admit them, in order to be satisfied as to their Capacity, their Religion, Life and Conversation; yet the Duty of these Judges who are to examine the qualifications of the Persons nominated, does not discharge the Lords of the Mannor of their Duty to nominate fit Persons. For besides that they cannot be certain that the Judges who are to examine them will do their Duty therein faithfully, they on their part are under an engagement to make a good choice, if they are capable of doing it by themselves, or to recommend it to Persons in whom they can confide to make this choice for them. For otherwise they make themselves Accomplices in the injustices which may be committed by those whom they appoint Judges, without examining their qualifications for the discharge of that Office. If the Lord of the Mannor were a Person incapable of making this choice, as a Child under Tutition; this Duty would regard the Tutor, who ought to take the measures necessary to preserve on one part the interests of his Minor, and on the other part to do justice to the Publick by making a good choice. And if the Relations whose advice he ought to take in this matter, should refuse to concur in these Measures, he might apply for redress to a Court of Justice; or take such other course as Prudence should direct for the discharge of his Conscience.

It is not the same thing with respect to those who are in possession of venal Offices, and have a right to sell them, as it is with those who have the disposal of the Title of an Office. For these make the Officer, and give him a Salary; but the others do not confer on the purchaser any Title of an Officer, and sell to him only their surrender or

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resignation of the Office, which divests them of the right they had to it, and which they may transmit to any one that will buy it, whether it be to dispose of that Right in favour of other Persons, or to reap the benefit of the Salary or Perquisites belonging to the said Office. Thus nothing obliges those who sell their Offices, whether it be the Officers themselves or their Widows, or Heirs, or others who have their Rights, to make any enquiry into the qualifications of the Purchasers, whom they do not make Officers, and who may perhaps make the purchase for other Persons.

The Ordinance of Orleans forbids expressly those who have Lands with a Jurisdiction annexed to them, to sell the Offices or Places of Judicature. The Lords of Mannors, whether they be Ecclesiastical or Secular Persons, and of what quality soever they be, who shall sell directly or indirectly the Places of Judicature, shall be deprived of their Right of Presentation and Nomination to the said Office; and in the like manner all other Persons of what Quality soever they are, who shall have the Right of Presentation and Nomination. Ordinance of Orleans, Art. 40. See that of Blois, Art. 100, 101.

[By an Act of Parliament in England 5 & 6 Edw. VI. cap. 15. made for the avoiding of Corruption in the Administration of Justice, and in the execution of Offices of Trust, it is enacted, That if any Person shall bargain or sell, directly or indirectly, any Office, or Deputation of any Office, which shall in any wise touch or concern the Administration or Execution of Justice, or the Receipt, Comptrolment or Payment of any of the King's Treasure or Revenue, or the surveying any of the King's Honours, Castles, Mannors, Lands, Tenements, Woods or Hereditaments, or any of the King's Customs, or the keeping any of the King's Towns, Castles or Fortresses; or which shall concern or touch any Clerkship to be occupied in any manner of Court of Record wherein Justice is to be administered; That then all and every such Person and Persons that shall so bargain and sell any of the said Offices, or Deputations, shall not only lose and forfeit all their Right, Interest and Estate in and to the said Offices or Deputations; but likewise the Persons purchasing the same shall be adjudged disabled Persons in the Law, to all intents and purposes, to have, occupy or enjoy the same.

The like Prohibition we find in the Canon Law, against the Sale of Offices of Ecclesiastical Jurisdiction; by which the Bishop who sells any such Office, is disabled to confer the same for the future, and the Person who purchases the Office is deprived of it. Extra. Lib. 5. Tit. 4. cap. 1.]

## XI.

11. Duty to see that Justice be rightly administered.

This Right of Jurisdiction, which Lords of Mannors have in their Lands, obliges them to see that Justice be duly

administred by their Officers, and that recourse be had to the King's Officers in the Cases which are called Royal Cases, and which are not properly cognizable in the Courts of Lords of Mannors, whether it be in Civil matters, such as relate to the publick Taxes, and other Duties belonging to the Crown, which it is not necessary we should enumerate here; or in Criminal matters, such as High-Treason in all its kinds, counterfeiting the Coin, unlawful Assemblies, and many other matters, the cognizance whereof is reserved to the King's Judges. And this Duty of the Lords of Mannors, to see that Justice be duly administred in their Lands, consists in restraining the injustice of their Officers by such ways as their Authority may furnish them with; and even by depriving the Officers of their Places in the case of Misdemeanors which may deserve such a Punishment; in taking due care that Crimes be punished; in protecting the Persons subject to their Jurisdiction against the Oppressions, Violences and other Injustices, whether of their Officers, or other Persons; in maintaining Peace among them as much as possible, in procuring the Rules and Orders relating to the Civil Policy to be observed; in taking care of the good Order of Churches, of Hospitals, and of the relief of the Poor. For all these Functions being part of the Administration of Justice, they particularly concern those who have a Right of Jurisdiction within the bounds of their own Lands. And as the Lords of Mannors have in their Lands the dispensation of Justice, in proportion to what the Prince from whom they derive their Rights has in his Kingdom; and as they have the profits of Confiscations, Fines and other Perquisites of Jurisdiction; so they are also obliged in proportion to do, within the bounds of their Lands, all that lies in their Power, for procuring therein a strict observance of Justice, & compliance with all the Rules and Orders of the Civil Policy, and the advancement of the publick Good m.

m. All these Duties are natural Consequences of the Right of Jurisdiction.

Hear therefore, O ye Kings, and understand; learn ye that be Judges of the ends of the Earth; give ear, ye that rule the People, and glory in the multitude of Nations: For Power is given you of the Lord, and Sovereignty from the highest, who shall try your Works, and search out your Conscience: Because ye being admonished of his Kingdom, ye have not judged aright, nor kept the Law, nor walked

*walked after the Counsel of God. Horribly and speedily shall he come upon you; for a sharp Judgment shall be to them that be in high places. For Mercy will soon pardon the meekest, but mighty Wrath shall be mightily tormented. For he which is Lord over all, shall fear no Man's Person, neither shall he stand in awe of any Man's Greatness; for he hath made the small and great, and careth for all alike. Wisdom of Sol. ch. 6. v. 1, 2, 3, &c.*

## XII.

*2. That there be no oppression or vexation in collecting their Dues.*

If the Lords of Mannors are obliged to take care that Justice be administered in their Courts, they are likewise as much obliged, or rather more, not to commit any injustice themselves, nor to convert into Violence, Tyranny and Oppression, an Authority which is put into their hands only for the support of Justice. Thus for their Dues, whether they collect them themselves, or employ others to do it, or let them out to Farmers; it is their Duty in all these Cases to regulate the collecting of them, so as it may be as little burdenson to the People as possible: whether it be by using mildness and humanity in the Seizures, Executions and other Distresses; or by exacting Payment of their Dues at times when it may be easiest for the People to pay, and especially for the poorer sort; or by not demanding, either as to the quantity or quality of the Grain, or other kinds of things that are due, or for Work and all other Rights that may belong to them, any more than what may be justly due to them by virtue of their Titles *n*.

*n* Thou shalt not defraud thy Neighbour, neither rob him. Levit. 19. 13.

*Behold, here I am, witness against me before the Lord, and before his anointed; whose Ox have I taken? or whose Ass have I taken? or whom have I defrauded? whom have I oppressed? or of whose hand have I received any Brabe, to blind mine Eyes therewith? and I will restore it you. 1 Sam. 12. 3.*

*See Amos 4. 1. Zeph. 3. 3.*

*1* We prohibit all Lords, and others, of what condition and quality soever they be, to demand, take, or suffer to be taken or demanded upon their Lands, or from any of the Inhabitants or Possessors thereof, any Sum of Money or other thing not really and truly due, whether it be on account of Taxes, Aids, Work or other thing, under what colour soever it may be; except in the Cases where the Subjects and others are bound by Law, and may be compelled by course of Justice, &c. upon pain of being punished according to the rigour of the Ordinances, the penalties of which it shall not be in the power of our Judges to mitigate. *Ordinances of Blois, Art. 280, 283.*

*2* We strictly require and command our Judges to do their Duty, and to administer Justice to all our Subjects, without exception of Persons, of what quality soever they may be; and we require our Associates and Prebears to see to the due execution of these Precepts, and not to suffer

our poor Subjects to be vexed and oppressed by the power of their Lords of Mannors, or others, whom we forbid to intimidate and threaten their Vassals who are to pay Duties and Acknowledgments to them: and we require them to carry themselves with humanity towards them, and to sue for their Rights by the ordinary ways of Justice. *Ordinance of Orleans Art. 104.*

## XIII.

Seeing Lords of Mannors have in the Churches situated within their Lands some of those sorts of Rights called Honorary, and which for the greatest part are real Abuses disapproved by the sacred Canons; it is a Duty incumbent on them, and also on those who have in other Churches Rights of the like nature, and a Duty not only of Justice, but also of Religion, to use the said Rights, so as not to transgress in the least against the Dignity and Sanctity of the Churches, the Order of Divine Service, and the Functions of the Pastors, and other Ecclesiastical Persons; and that by paying them the Duty which Religion demands, they may give to others a good Example of a modest and respectful Carriage in the Churches, and of a dutiful Behaviour towards those who exercise any spiritual Function *o*.

*o* Pax mentis amplectenda devotio est, qua se Julius nobis in re Juliana sui juris fundasse prohibetur Ecclesiam: quam in honorem sancti Viti Confessoris ejus nomine cupit consecrari. Hanc igitur, frater charissime (si ad tuam diocesim pertinere non ambigis) ex more convenit dedicari, collata primus donatione solemni, quam ministris Ecclesie destinasse se prefati muneris testatur oblato, scilicet sine dubio preter processionis aditum, qui omni Christiano debetur, nihil ibidem se proprii juris habiturum. 16. q. 7. c. 26.

Et ideo frater charissime, si ad tuam pertinet Patrocinium, benedictionem supra memoratae basilicæ solemni veneratione depende. Nihil ramen sibi fundator ex hac Basilica noverit vindicandum, nisi processionis aditum, qui Christianis omnibus in commune debetur. C. 27. *ead*

Ut Laici secus altare quando sacra mysteria celebrantur, stare vel sedere inter clericos non presumant sed pars illa, quæ cancellis ab altari dividitur, tantum psallentibus præter clericis. Ad orandum vero & communicandum Laicis; & sceminiis (sicut mos est) pateant sancta sanctorum. Cap. 1. *extr. de vita & honor. cler.*

## XIV.

The Duties of Gentlemen, who are engaged in any Condition or Profession, are the same with those of the other Persons in the same Employments. And these Duties are explained in their proper places, as has been said in the Preamble of Tit. 9. And as for the Gentlemen who have no particular Engagements, either in the Church, or the Administration of Justice, or in the Profession of Arms, the Duty proper to their

*13. To avoid Abuses in the use of the Honorary Rights in the Churches.*

*14. Gentlemen ought not to be concerned in Trade, nor to farm any of the Lands or Goods belonging to the Church.*

their Condition, it to live in it without derogating from their Nobility, that is, to abstain from the exercise of Professions unworthy of this Rank, and not to make a bad use of the Authority they may have. Thus they are prohibited to take to farm, either in their own Name or that of other Persons, Lands or Goods belonging to the Church *p*. And the same Prohibition is likewise extended to Officers. Thus in the same manner Gentlemen and Officers are forbid to carry on any Trade or Commerce, either by themselves or their Servants, or in the name of other Persons *q*, as has been mentioned in another place *r*.

*p* ' We forbid all Gentlemen and Officers, as well those employed under us, as those belonging to Lords and Gentlemen, to take for the future, or to be any way concerned directly in taking Leases or Farms of Church Benefices, Tithes, Rents, and other Ecclesiastical Revenues, under what colour soever it be, or indirectly by using the names of other Persons, and they to go sharers with them: And we likewise enjoin them to give no manner of disturbance to Ecclesiastical Persons in the Leases they have already granted, or may hereafter grant, nor to intimidate those who are willing to take the Leases, or to advance the Rent, upon pain of being declared ignoble, and as such made liable to the Taxes, and their Successors after them. Ordinance of Blois Art. 48.

*q* ' We prohibit all Gentlemen and Officers of Justice, to deal in any sort of Merchandize, and to take or hold any Farms, either in their own Names, or of other Persons; upon pain, as to the Gentlemen, of being deprived of their Nobility, and made subject to the Land Tax, and as to the Officers, of being deprived of their Offices and Commissions. Ordinance of Orleans Art. 109.

See the other Ordinances on the same subject.

*r* See Tit. 7. Sect. 4. Art. 10. and Sect. 1. of the following Title.

Nobiliores navibus, & honorum luce conspicuos, & patrimonio diuiores, perniciosum urbibus mercimonium exercere prohibemus, ut inter plebeios & negotiatores facilius sit emendi vendendique commercium. l. 3. C. de Commert.



## TIT. XII.

### Of Commerce.

**W**E have already spoke of Commerce in the 7th Title, but only with respect to the subject matter of that Title, which is of the means of procuring plenty of all things in a Kingdom; so that what has been there said regards principally the Commerce carried on with Stran-

gers, in order to bring into a Kingdom the Commodities that must be fetched from other Parts. But we have not there treated of what relates in general to the Nature and Use of Commerce, and the Duties of those who make profession of it. And this shall be the subject of this Title: where we shall explain, in the first Section, the Nature and Use of Commerce; and in the second, the Duties of those who exercise it.

## SECT. I.

### Of the Nature and Use of Commerce.

#### CONTENTS.

1. Definition of Commerce.
2. Necessity of Commerce.
3. This Commerce is not understood of Immoveables.
4. Three sorts of Persons who trade differently in several things.
5. Those who sell the Produce of their own Lands.
6. Artificers who sell their Work.
7. Definition of those properly called Merchants.
8. It is by Commerce that the Inhabitants of every Country have the use of all things.
9. Precautions in favour of Commerce.
10. Monopolies forbidden.
11. A Jurisdiction peculiar to Merchants for their Commerce.

#### I.

**W**E give the name of Commerce in general to the usage of buying and selling, and bartering, which has been introduced, to the end that every one might have the Things they stand in need of. Thus we may distinguish two manners of Commerce: one by Sale, when a Thing is given for Money; and the other by Exchange, when on both sides a Thing is given, and not Money *a*.

*a* See Tit. 7. Sect. 2. Art. 2.

#### II.

The use of Commerce is a necessary Consequence of the variety of the wants of Mankind. For since no body can have always, and in all places, whatever he stands in need of, it is necessary that he get it from those who have it; which he cannot do but by Commerce, either by bartering Com-

1. Definition of Commerce

2. Necessity of Commerce

modity for Commodity, or by purchasing it with Money: for the other ways of applying things to ones use, would not be sufficient to supply this want. Thus altho one may have a Thing, either by Donation, or by a Loan, by hiring it, or otherwise; yet these ways of having Things do not extend to all those Things which one may stand in need of, nor to all the several uses of each Thing without distinction *b*.

*b* It is but few things that are acquired by Donations; and the letting of a thing to hire, and the lending the use of it, give only a certain Use for a certain Time.

### III.

3. This Commerce is not understood of Immoveables.

The Commerce here mentioned, doth not extend to the Sale or Exchange of Immoveables; for tho these sorts of Acquisitions make a kind of Commerce, yet it is of a nature altogether different from that which is the subject of this Title, and which relates only to Sales and Exchanges of moveable Things called Merchandize, whether they be Provisions or other Things which it is necessary to be Master of, in order to have the intire free use of them *c*.

*c* The Commerce mentioned here is understood only of those kinds of Things called Merchandize.

### IV.

4. Three sorts of Persons who trade differently in several things.

Altho the name of Merchant is commonly given to those who drive a Trade either in selling or exchanging Goods or Merchandizes; yet it is necessary to distinguish three sorts of Persons who carry on this Commerce, and of which there is only one sort to whom the name of Merchant does properly belong, as will appear by the three Articles which follow *d*.

*d* See the following Articles.

### V.

5. Those who sell the Produce of their own Lands.

The first sort of Persons who carry on a Commerce by selling Goods or Merchandizes, is of those who, let them be of what condition soever they will, have to themselves, and draw from their own Lands, Grain, Fruits, Flax, Hemp, and other Produce; or who have Cattle from which they reap several Profits: For these Persons, without being Merchants, sell or cause to be sold that Grain, those Fruits, those Profits. And it is the same with respect to those who have Leases of the Lands or Estates of other Persons, or who cultivate them for a certain Portion of the Fruits *e*.

*e* We don't call these Merchants, who sell the Produce of their own Lands.

*f* It may be proper to remark on this Article, what is said in the second Law *ff. de nundinis*, which is taken out of the second Book of the Republick of *Plato*; That Husbandmen and Artificers ought not to be so long diverted from their Labours, as to carry in Towns to dispose of what they carry there for Sale, and that they ought to leave that attendance to other Persons who take upon them the charge of selling their Goods.

*Si quis ipsos cultores agrorum, vel piscatores deferre urenslia in civitate iusserit, ut ipsi ea distrahant, destituetur annonæ præbitio, cum advocentur ab opere rustici. Qui confestim ubi detulerunt mercem, tradere eam, & ad opera sua reveru debeant. l. 2. ff. de nund.*

This Regulation would not suit with our Taste, nor with our Usage, and would be attended with many Inconveniencies. Husbandmen and Tradesmen have business of their own to transact in the Fairs and Markets of Towns; and it would cost them too dear to have their Affairs transacted by those Brokers or Retailers, who might perhaps not be faithful enough in the discharge of their Trust.

### VI.

The second sort of Persons who trade in Goods or Merchandizes, are the Handicraftsmen, who sell what their Handicraft produces, and what they manufacture themselves, whether they contribute nothing of their own to it besides their Workmanship, or put in to it some Materials of their own *f*.

*f* Handicraftsmen are not properly Merchants.

### VII.

The third sort of Persons who deal in buying and selling Goods or Merchandizes, are those who are properly called Merchants, whose Profession consists in buying for Money, or purchasing with other Goods the Things in which they deal, and in selling them after the same manner, whether they sell by wholesale or retail *g*.

*g* Merchants are distinguished from the Persons who sell the Produce of their own Lands, in that they procure from others, either by Sale or Exchange, the Things which they sell. And they are distinguished from Handicraftsmen, in that they do not manufacture the Merchandizes which they sell. There are indeed Merchants who manufacture the Stuffs or other Merchandizes which they themselves sell: But as they do not assist in the Manufacture with their own Hands, they are not Handicraftsmen, but true Merchants.

### VIII.

It is by the means of these different sorts of Commerce that there is in every Kingdom, in every Province, in every Place, a ready and present use of the things necessary to all Persons, for Food and Raiment, for Cures, and for all the other Wants and Conveniences of Life; and it is also by this means that the Publick is supplied with the things necessary for War, for Navigation,

6. Artificers who sell their Work.

7. Definition of those properly called Merchants.

8. It is by Commerce that the Inhabitants of every Country have the use of all things.

vigation, and in general, with every thing necessary for the subsistence of a Kingdom, and of the Families whereof it is composed. Thus the natural effect of Commerce is to facilitate to every one the use of all Things, and even of those which are to be fetched from the most remote Countries *b*.

*b* See the 7th Title.

## IX.

9. Precautions in favour of Commerce.

It is because of this usefulness, and of this necessity of Commerce, that in order to facilitate the use thereof, the Laws have made divers Regulations about it. Thus the Ordinances in France have prohibited Officers to drive any Trade in Merchandizes, to the end not only that they may not be diverted from the exercise of their proper Functions, but also that a Liberty of Commerce may not be left to Persons, who by their Authority might ingross the whole Trade to themselves, and render the condition of the Merchants and Buyers worse. And the same Consideration has procured all manner of Commerce to be prohibited to the Gentry in France. And the said Prohibitions extend even to the Commerce which the said Officers and Gentlemen might carry on in the Names of other Persons, for their own behoof.

*¶ Nobiliores natalibus, & honorum luce contenti, & patrimonio ditiores, perniciosum utibus mercimonium exercere prohibemus, ut inter plebeios & negotiatores facilius sit emendi vendendique commercium. l. 3. de comm. & mercat.*

See the 10th Article of the 4th Section of the 7th Title, and the 14th Article of the 2d Section of the preceding Title.

## X.

10. Monopolies forbidden.

It is upon the same Consideration of the Liberty of Commerce, that the Laws have severely prohibited all Monopolies, as has been explained elsewhere *l*.

*l* See Tit. 7. Sect. 4. Art. 8.

## XI.

11. A Jurisdiction peculiar to Merchants for their Commerce.

It is also in order to promote Commerce, that the Kings of France have established the Jurisdiction of the Judges and Consuls of Merchants, for determining the differences which may arise among them in relation to their Merchandizes, by a way that is more summary, and of less expence, than the ordinary Proceedings in other Law-Suits. And they have likewise ordained, that the differences among Co-Partners in any Commerce, shall be

adjusted by Arbitrators, whom both sides shall agree on *m*.

*m* See the Ordinances of Charles IX. in November 1563. and that of 1673. See the Code of the Merchant Law.

## S E C T. II.

Of the Duties of those who drive any Trade or Commerce.

**A**LTHO it may seem that the Duties treated of in this Section, regard only the Persons comprehended under the name of Merchants, in the sense explained in the 7th Article of the preceding Section, and that therefore they have no relation to those who sell what is the produce of their own Estates, nor to Handicraftsmen, who are distinguished from Merchants, as has been explained in the 5th and 6th Articles of the same Section; yet seeing these Duties are essential to all Sellers, it is necessary to extend the Rules explained in this Section to all sorts of Sellers, so far as they may be applicable to them. And we must likewise apply to all sorts of Commerce, and to all Sellers, the Rules explained in the Title of the Contract of Sale in the Civil Law in its natural Order, according as they may be capable of being applied to them.

## The CONTENTS.

1. Commerce an occasion of Injustice; the first Duty is to avoid it.
2. Duty of Merchants, to say nothing contrary to Truth.
3. Another Duty, not to give one Commodity instead of another.
4. Another, to declare the faults of the Merchandize.
5. Another, not to hide the faults of the Merchandize.
6. Another, to have good Weights and Measures.
7. Another, not to make Monopolies, nor to carry on any prohibited Trade.
8. Prohibition of Combinations among Merchants not to sell but at a certain Price.

## I.

**O**F all Professions, there is none more exposed to Avarice, and to Injustice which is the Consequence of it, than that of Commerce. For since those

1. Commerce an occasion of Injustice; the first Duty is to avoid it.



those who exercise it, draw Profit from the bare trouble of buying in order to sell again; since they have the Liberty of demanding what they please, and the facility to cheat in the price and quality of their Merchandizes, the desire of Gain being joined with a favourable opportunity, leads them easily to the Commission of these Injustices. Thus the first Duty of those who exercise this Profession, is to propose to themselves therein other Views than that barely to make Gain by it *b*, and to confine themselves to an honest Profit, abstaining from all manner of lying, from all unfaithfulness, and to sell the things in which they deal only at a reasonable Price.

*a As a Nail sticketh fast between the joinings of the Stones; so doeth Sin stick close between buying and selling. Ecclesi. 27. 2.*

*By the multitude of thy Merchandize they have filled the midst of thee with Violence, and thou hast sinned. Thou hast defiled thy Sanctuaries by the multitude of thine Iniquities, by the inquiry of thy Traffick. Ezek. 28. 16, 18.*

*b Qui emolumenta negotiorum omnibus captant. l. 1. Cod. de comm. & mercat.*

*c Thus no Man go beyond and defraud his Brother in any matter. 1 Thess. 4. 6.*

*Qualitas lucri negotiantem aut excusat, aut arguit; quia est & honestus questus & turpis. Quia difficile est inter eminentis vendentisque commercium non intervenire peccatum. C. qualitas dist. 5. de penit.*

## II.

2. Duty of Merchants to say nothing contrary to Truth.

This first general Duty of Fidelity in Commerce, and the Duty common to all Men never to transgress the sincerity that is owing to Truth, obliges Merchants of all sorts never to tell a lye concerning the Price they paid for the thing they are about to sell. For they may very well decline telling what the Price of it is, but they ought not to say it is greater than really it is: seeing on one side they transgress against Truth by the lye; and on the other side they cheat, and are guilty of Unfaithfulness, which is near of kin to Theft *d*.

*d Keep thee far from a false matter. Exod. 23. 7.*

*Use not to make any manner of lye; for the custom thereof is not good. Ecclesi. 7. 13.*

*Speak ye every Man the truth to his Neighbour.*

*— Love no false Oath. Zech. 8. 16, 17.*

*Whosoever putting away lying, speak every Man truth with his Neighbour; for we are Members one of another. Eph. 4. 25. Mat. 5. 37. Jam. 5. 12. Luk. 12. 2. Exod. 20. 7. Levit. 19. 13.*

*The getting of Treasures by a lying Tongue, is a vanity tossed to and fro of them that seek Death. Prov. 21. 6.*

## III.

The same Duty of Fidelity obliges also the Merchants not to give one Merchandize instead of another *e*. For this is likewise a Lye and a Cheat, worse than that of telling a lye about the price of the Purchase; seeing it is much easier not to give Credit to what they say of the Price the thing cost them, than to judge of the quality of the Merchandize: so that this Unfaithfulness comes much nearer to Theft than the other, and even deserves a Punishment which a good Judge would not fail to inflict if the matter were proved.

*e Si res pro auro veniat non valet (venditio). l. 14. in f. ff. de contr. empt.*

*Mensam argento cooperatam mihi ignoranti pro solida vendidisti imprudens, nulla est emptio pecuniaque eo nomine data condicetur. l. 41. §. 1. eod.*

*Si error aliquis intervenit, ut aliud sentiat puta qui emit, aut qui conducit: aliud qui cum his contrahit, nihil valet quod acti sit. l. 57. ff. de obl. & act.*

*Si igitur ego me fundum emere putarem Cornelianum, tu mihi te vendere Sempronianum putasti, quia in corpore dissensimus, emptio nulla est. l. 9. ff. de contr. empt.*

*See Sect. 8. Art. 11. of the Contract of Sale in the Civil Law in its Natural Order.*

*f If Error vacates the Sale, altho the Seller had acted fairly and honestly; if he had fraudulently sold one thing for another, he would be punishable.*

## IV.

Seeing things are in Commerce only for their use; it is not enough not to give one Commodity instead of another, but it is necessary that the thing given, be of the quality which it ought to be of for the use it ought to yield. And if it has any faults which diminish the value of it, the Merchant is obliged to declare them, if they be such that were they known, he who bargains for the thing would not buy it, or at least not give so great a Price for it *f*.

*f Certioresve faciant emptores qui morbi vitiiue cuique sit. l. 1. §. 1. ff. de ad. ed.*

*Qui fortasse si hoc cognovisset, vel empturus non esset, vel minoris empturus esset. l. 39. ff. de ass. empt. & vend.*

*See Sect. 11. of the Contract of Sale in the Civil Law in its Natural Order.*

*Si quis in vendendo praedio confinem celaverit, quem emptor si audisset, empturus non esset; teneri venditorem. l. 35. §. ult. ff. de contr. empt.*

*Si quid tale fuerit villi sive morbi, quod usum ministeriumque hominis impediatur, id dabit redhibitionem locum. l. 1. §. 8. ff. de ad. ed.*

## V.

It is a Consequence of the Duty of not deceiving in the quality of the Merchandize, to do nothing likewise that the Merchandize.

*4. Another Duty, not to give one Commodity instead of another.*

*4. Another, to declare the faults of the Merchandize.*

*5. Another, not to hide the faults of the Merchandize.*

that may conceal from the Buyers the faults they might otherwise discover in the thing. Thus those who with this View make use of any slight or cunning which may have this effect, offend against this Duty g.

g *I very one that doth Evil, hateth the Light.* Joh. 3. 20.

*But they counted our Life a Pastime, and our time here a Market for Gain: for, say they, we will be getting every way, tho it be by evil means.* Wild. of Sol. 15. 12.

*He that hasteth to be rich, hath an evil Eye, and considereth not that Poverty shall come upon him.* Prov. 28. 22.

## VI.

6. Another, to have good Writings and Measures.

The command of not stealing, which is common to all Men, is a Law to all Merchants to keep just Weights and Measures h.

h *Drivers Weights, and divers Measures, both of them are a like abomination to the Lord. Drivers Weights are an Abomination unto the Lord, and a false Ballance is not good.* Prov. 20. 10, 23.

*Thou shalt not have in thy Bag drivers Weights, a great and a small. Thou shalt not have in thine house divers Measures, a great and a small. But thou shalt have a perfect and just Weight, a perfect and just Measure shalt thou have. For all that do such things, and all that do unrighteously, are an Abomination unto the Lord thy God.* Deut. 25. 13, &c.

*Annus quod inferitur a collatoribus, si quis vel solidos voluerit, vel materiam appendere, æqua lance & liberam emis paubus suscipiatur.* l. 1. c. de pond. V. l. 15. §. 3. ff. de mm. 25. ann.

## VII.

7. Another, not to make Monopolies, nor to carry on any prohibited Trade.

We may add as a general Duty of Merchants, that of observing the Ordinances, and the Regulations which concern them; particularly those which forbid Monopolies, and the selling of certain things to Strangers i.

i *Jubemus ne quis cujuscunque vestis vel piscis, vel pectusum forte, aut echini vel cujuslibet alienius ad victum, vel ad quemcunque usum pertinentis speciem, vel cujuslibet materię, pro sua auctoritate, vel sacro jam elicto aut in posterum eliciendo rescripto, aut pragmatica sanctione, vel sacra nostra pietatis adoratione, monopolium audeat exercere.* l. un. C. de monopol.

*Nemo alienigenis Barbaris cujuscunque generis ad hanc urbem sacratissimam sub legationis specie, vel sub quocunque alio colore venientibus, aut in diversis aliis civitatibus vel locis, loricas, scuta, & arcus, sagittas, & spathas, & gladios, vel alterius cujuscunque generis arma audeat venundare. Nulla prorsus isdem tela, nihil penitus ferri vel facti jam, vel adhuc infecti, ab aliquo distrahatur.* l. 2. c. quæ res export. non deb.

## VIII.

8. Prohibition of Combinations among Merchants not to sell but at a certain Price.

The same Justice which forbids Monopolies, forbids also Combinations among Merchants not to sell certain Commodities at a lower Price than what they agree on among themselves m.

m *Ne quis illicitis habitis conventionibus conerit, aut paciscatur, ut species diversorum corpo-*

*rum negotiationis, non minoris quam inter se statuerint, venundentur.* l. un. C. de monopol.



## T I T. XIII.

## Of Trades and Handicrafts.

**W**E must not comprehend in the number of Arts treated of here, those which are called Liberal, and which we shall handle under the Title of Universities. For those Liberal Arts have the dignity of Sciences, and are greatly distinguished from these which are the subject of this Title, and which are called Mechanick Arts, because they are exercised by the labour of Hands, and with Tools.

The use of Trades and Handicrafts has been a Consequence of the nature of Man, and of his destination to Society. For by his Nature, he is composed of Senses and of Members made for Labour, and he was destined to it even before his Fall a; and by the destination of Men to a sociable Life, which ought to unite them, God has rendred necessary to them the use of an infinite number of Labours for the multitude of different Wants. But tho it be true that Labour was natural to Man, even in the State of Innocence, and that the said Labour during that State had nothing painful in it, yet his Fall having changed his Condition, without changing in his Nature what regards his destination to Labour, God has by a Law enjoined Labour to him as a Punishment; and he has ordained that even the Life of every one should depend on a painful Labour, and that no one should have his Bread but with the sweat of his Brow, and by his exercise in some Occupation that should intitle him to his Nourishment b: and he declares, all those to be unworthy of eating, who do not earn, or deserve their subsistence by some Labour c.

a *And the Lord God took the Man and put him into the Garden of Eden, to dress it, and to keep it.* Gen. 2. 15.

b *In the sweat of thy Face shalt thou eat thy Bread.* Gen. 3. 19.

c *For even when we were with you, this was commanded you, that if any would not work, neither should he eat.* 2 Thess. 3. 10. Prov. 6. 6, 7, &c.

d *There is no Condition, even those of the highest Dignity not excepted, which has not for its*

One may easily judge by these Principles, of the necessity of divers Labours in the Society of Men, how pernicious the Vice of laziness and idleness is, and how many People whom this Law which enjoins Labour renders unworthy of Life, would be worthy of Death it self, upon the account of the bare abstaining from Labour, if the Justice due to them, were not reserved to another Season, and to other Punishments.

The Labours of Men are of several sorts: and we may distinguish them, first, into those which might be natural before the Fall of Man, such as Husbandry which he was to exercise in the Terrestrial Paradise; and those which were only a Consequence of his Fall, such as the Labours necessary for Clothing and Lodging, of which the innocent Man, being ignorant of his Nakedness, would have had no occasion. And we may place in this second Rank, the Labours of the Mind, which serve to restrain the Injustices of Men, and to contain them within the Order of their Society; which takes in all the different Employments necessary for the Government, and the Administration of Justice.

All these sorts of Labours, which are necessary in the present state of the Society of Mankind, may be reduced to two general kinds, which comprehend every thing that may employ the Persons both of the one and the other Sex.

The first, to begin with the chief of the Wants of Men, is that of the Labours of Hands which produce some useful Work, whether it be for Nourishment, Lodging, Diet, or for all the other sorts of Wants. And it is this first kind of Labours which employs

its essential Character, and for its chief and indispensable Duty, its Engagement, so that Work and Labour for which it is established; and those who pretend to be exempted from Labour, are ignorant of their own Nature, they overturn the foundations of Order and Society, they transgress the Law of Nature and the Divine Law; so that it ought to be no surprize to any body what St. Paul has said, that he who does not labour is unworthy of Life, which is designed only for Labour; and we learn in the Gospel, that he who leads an unprofitable and idle Life, is not only unworthy of this Life, but even deserves eternal Death. See *Mat. 23. 20. Ezek. 18. 49.*

*We beseech you, Brethren, that ye increase more and more; and that ye study to be quiet, and to do your own Business, and so work with your own hands, as we commanded you. 1 Thim. 4. 10, 11. See Prov. 19. 24. 1 Cor. 3. 8. Eccles. 33. 28.*

*And the Eyes of them both were opened, and they knew that they were naked; and they sewed Fig-Leaves together, and made themselves Aprons. Gen. 3. 7.*

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those whom we call Artificers and Handicraftsmen, and those who spend their time in tilling the Ground, and looking after Cattle, Labourers, Shepherds and others, who are distinguished from Artificers, altho in reality they do exercise certain kinds of Arts. But because the Labours of these Persons do not produce Works made with Hands, such as the Works of those who build Houses, who make Stuffs, and all the other things which are the different Works of Arts, and of an Industry acquired only by a pretty long study of many Rules, and long Experience, before they can attain to the habit of exercising the Art, we do not place the Labour of Shepherds and Husbandmen in the number of Arts.

The second kind, is that of the Labours of the Mind, which do not produce a Work made with Hands; such are the Labours of those who have the care of the Government, of those who are concerned in the Administration of Justice, of the Pastors and Teachers of the Church, of the Professors of Sciences, of the Officers of the Revenue, and an infinite number of other different Employments. And we may reckon among the Labours of the Mind, Writings, Treatises, Books, whether they relate to matters of Religion, or of Sciences, or others, from which the Publick may reap any Advantage: and altho Books and Writings appear to be a Work of the Hands, that which is sensible in the Writing or Printing being without doubt the Handy-work of the Writer or Printer; yet this Work, which is undoubtedly the Product of the Art and of the Artist, is not the Work of the Mind of

*Since it is a natural effect of these Labours, to be painful and burdensome to those who exercise them, one ought not to make them still more so to those poor People, by an unjust keeping back the Wages they may deserve.*

*The Bread of the needy is their Life: he that defraudeth him thereof is a Man of Blood. He that taketh away his Neighbour's Living, slayeth him; and he that defraudeth the Labourer of his hire, is a Bloodshedder. Eccles. 34. 21, 22.*

*Thou shalt not oppress an hired Servant that is poor and needy; whether he be of thy Brethren, or one of thy Strangers that are in thy Land within thy Gates. At his Day thou shalt give him his hire, neither shall the Sun go down upon it, for he is poor, and setteth his Heart upon it, lest he cry against thee unto the Lord, and it be sin unto thee. Deut. 24. 14, 15.*

*Thou shalt not defraud thy Neighbour, neither rob him: the wages of him that is hired, shall not abide with thee all Night until the Morning. Levit. 19. 13.*

*See Levit. 22. 25, 26, 27.*

*Let not the Wages of any Man, which hath wrought for thee, tarry with thee, but give him it out of hand. Tobit 4. 14.*

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him

him who composed the Writing or the Book; but is only a sign of it, invented to supply the want of Speech, which Speech it self is only a sign or indication of the Thought; and it is by the means of this sign of the Book or Writing that the deposit of the Thoughts of the Writer is preserved for those who can understand the Writing, or the Book.

It is easy to judge by this account of the nature of Labour, and by the Law which imposes it on Man, that of all the different Conditions of which Society is composed, there is none to which the observance of this Law is more natural than that of Artificers, whose direct Profession is a continual and painful Application to some Labour of the Body, who earn their Bread with the sweat of their Brow; whereas in the other Conditions, the occasion of Labour is not so continual, and it is easier and more usual to abstain from it: so that upon this Consideration, and that of the usefulness of Trades and Handicrafts, those who exercise them have their merit in the Society, and ought to be accounted as necessary and useful Members of it.

It is not our business here to enter into the detail of the distinctions of the different sorts of Trades and Handicrafts, which we might distinguish under several Views; such as those who work in things necessary for Life, for Health, for Clothing, for Habitation, those who work for other sorts of Necessities or Conveniencies, whether it be for Diversion, as the makers of Instruments of Musick, or for several sorts of Furniture; those whose Labours serve for the uses of the War, in making Arms, Artillery, or for the use of Navigation; those who are distinguished by the value of the Materials in which they work, Gold, Silver, Jewels, and other precious matters; those who are employed in a much greater variety of Works, such as Carpenters, Masons, Iron-mongers, Lock-smiths; and those whose Works, and the Materials they work upon, are more confined, such as Hatters, Glovers, Shoemakers, and others.

It is necessary also to distinguish, under another view, certain Arts which contain as it were two sorts of Professions; one is of those which join to the

industry of the Hand, the Art of inventing Works exquisite in their kind; and the other, of those who with little or no Invention, work on what others have invented.

Thus, we give the name of Painters to those who are the most skilful Inventors in the Art of Painting; and the same name is given to those of the same Art who only copy after Originals: and it is the same thing in Sculpture, in Architecture, in Mechanicks. But there is a wide difference between those great Inventors, and the others in these sorts of Arts. For those of the inferior degree are but little more regarded than many other Artificers; but the others have a singular Merit, which even places some of them in the number of illustrious Men, according as they excel in their Art.

It is to be remarked on this subject, that we are not to reckon in the number of Artificers who exercise the different Professions of Trades and Handicrafts, those who for their diversion, employ themselves, either in designing, or in some handy-work, without making a Trade of it. For this use of Arts, does not make it their Profession, but serves only as an innocent Amusement, and as an Occupation, which some make choice of in obedience to the Law which enjoins Labour.

Lastly, it is necessary to observe on the subject of Trades and Handicrafts, and in general on all sorts of Professions; that they ought all of them to have the Character of Honestly, and of Usefulness for the publick Good; to be such as may be exercised without any danger to the Order of the Society, and to have nothing in them contrary to the Spirit of Religion, or the Laws of the Church. For no Trade, no Profession whatsoever can be lawful, that has not these Characters.

All the Rules concerning Trades and Handicrafts are reduced to two kinds: one of those which regard in general the Discipline or Policy of Trades and Handicrafts; and the other of the Rules of the Duties of the Persons who exercise them: and these two sorts of Rules shall be the subject matter of the two following Sections.

## SECT. I.

## Of the Government or Discipline of Trades and Handicrafts.

## The CONTENTS.

1. The Usefulness of cultivating Trades and Handicrafts.
2. Freedoms in Trades.
3. Companies of Trades.
4. The Policy of those Companies.

## I.

1. The Usefulness of cultivating Trades and Handicrafts.

SINCE it is of Importance to the Publick, that every Trade and Handicraft be carried to all the Perfection it is capable of, by all the Ways which may render the Use of it profitable or easy; the Exercise of Trades demands in general, that they improve in every one of them all the old Inventions which have been preserved in memory until our Days, and that they add to them new ones as much as is possible, and particularly that every one of those Persons who exercise Trades and Handicrafts be thorowly instructed in that which he makes Profession of, and that he have, besides the Knowledge of the Rules of his Art, an Experience which may be sufficient to enable him to practise a.

a See the following Article, and the Remark there made on it.

And Moses said unto the Children of Israel, See the Lord hath called by Name Bezaleel the Son of Uri, the Son of Hur, of the Tribe of Judah. And he hath filled him with the Spirit of God, in Wisdom, in Understanding, and in Knowledge, and in all manner of Workmanship, and to devise curious Works, to work in Gold, and in Silver, and in Brass; and in the cutting of Stones to set them, and in carving of Wood to make any manner of cunning Work. And he hath put in his Heart that he may teach, both he and Aholiab the Son of Ahisamach, of the Tribe of Dan. Them hath he filled with Wisdom of Heart, to work all manner of Work, of the Engraver, and of the cunning Workman, and of the Embroiderer, in Blue and in Purple, in Scarlet, and in fine Linen, and of the Weaver, even of them that do any Work, and of those that devise cunning Work. Exod. 35. 30, 31, &c.

And Hiram King of Tyre sent Messengers to David, and Cedar-Trees, and Carpenters, and Masons, and they built David a House. 2 Sam. 5. 11.

Moreover there are Workmen with thee in abundance, Hewers and Workers of Stone and Timber, and all manner of cunning Men, for every manner of Work: Of the Gold, the Silver, and the Brass, and the Iron, there is no number. 1 Chron. 22. 15, 16.

He built also the House of the Forest of Lebanon, the Length thereof was a hundred Cubits, and the

Breadth thereof was fifty Cubits, and the Height thereof thirty Cubits, upon four Rows of Cedar Pillars, with Cedar Beams upon the Pillars. And it was cover'd with Cedar above upon the Beam, that lay on forty five Pillars, fifteen in a Row, &c. 1 Kings 7. 2, 3.

See the following Articles.

## II.

It is for this purpose of improving Trades and Handicrafts, that it is not permitted to any to make Profession of them, unless they have spent a sufficient time in acquiring the Knowledge and Habits necessary for practising them, at least in Trades which are of such a Consequence as to demand this Regulation, and in Places where it may be observed b.

b It is for this end that Freedoms in Trades are established, and Regulations made for Apprentices.

And for all manner of Work made by the hands of Artificers. 1 Chron. 29. 5.

## III.

It is for the same purpose that it is permitted to the Masters of each Trade to form a Body, and to meet together for common Affairs, to make Statutes and Regulations, which are to be approved of by the Ordinances, or by a proper Court of Justice, and particularly in what relates to the Policy and good Use of every Trade and Handicraft, for the Improvement of it. And it is for the Observance of those Rules and Orders, that they appoint in the said Companies some of their own number, by the Name of Wardens, Jurates, or other Names, to inspect and visit the Work, and to judge if it is such as it ought to be, and to see that all the Rules of the Company be duly observed c.

c Collegia Romæ certa sunt quorum corpus Senatusconsultis atque constitutionibus principalibus confirmatum est: veluti pistorum & quorundam aliorum & naviculatorum qui (&) in provinciis sunt. l. 1. ff. quod cuj. iur.

Sodales sunt, qui ejusdem collegii sunt, quam Græci Εταίρειαν vocant. His autem potestatem facit lex, pactiorem quam velint sibi ferre, dum ne quid ex publica lege corrumpant. l. 4. ff. de colleg. & corp.

Enimvero ad negotiationem aut quid aliud, quidquid hîs disponant, ad invicem firmum sit, nisi hoc publicæ leges prohibuerunt. d. l. in f.

## IV.

The Companies of Trades, or other Corporations, have their common Affairs, their Rights, their Privileges and Policy for the Observance of the Statutes and Rules made in order to maintain the good Exercise of the Trade

4. The Policy of those Companies.

and Handicraft for the Service of the Publick. And they are to be called to account by the Officers of Justice for what they do contrary to the said Regulations *d.*

*d* Quibus permiffum est corpus habere collegii, societatis five cujusque alterius eorum nomine, proprium est, ad exemplum reipublicæ habere res communes, arcem communem, & actorem five syndicum per quem tamquam in republica quod communiter agi fierique oporteat, agatur, fiat. l. 1. §. 1. ff. quod cuius m. nom.

## SECT. II.

### Of the Duties of Artificers and Handicraftsmen.

#### The CONTENTS.

1. The Artificer ought to be skilful in his Art.
2. He ought to exercise his Trade faithfully.
3. Costs and Damages for Works that are faulty.
4. Monopolies and Combinations of Artificers.
5. Reports made by skilful Artificers in Courts of Justice.
6. General Duty of Artificers, to observe the Regulations prescribed them.

#### I.

1. The Artificer ought to be skilful in his Art.

THE first Duty of every one in the Trade he professes, is not to be ignorant of the Rules of it, that he may not cheat the Publick *a.*

*a* See Sect. 1. Art. 2.

Imperitia culpæ adnumeratur. l. 132. ff. de reg. jur.

Quod per imperitiam commisit imputari ei debet. Prætextu humanæ fragilitatis delictum decipientis in periculo homines innoxium esse non debet. l. 6. §. 7. ff. de off. pref.

Moreover there are Workmen with them in abundance, Hewers and Workers of Stone and Timber, and all manner of cunning Men, for every manner of Work: Of the Gold, the Silver and the Brass, and the Iron there is no number. 1 Chron. 22. 15, 16.

Send me now therefore a Man cunning to work in Gold, and in Silver, and in Brass, &c. 2 Chron. 2. 7.

#### II.

2. He ought to exercise his Trade faithfully.

It is necessary to join to the Knowledge of the Rules of an Art, Fidelity in the Work, to make it such as it ought to be for the Use it is designed for, and according to the Regulations that have been made for Works of that kind *b.*

*b* Poterit ex locato cum eo agi, qui vitiosum opus fecerit. l. 51. §. 1. ff. locat.

#### III.

If the Work is not such as it ought to be according to the Regulation, or according to the Bargain made about it, the Workman is bound either to take it back, or to abate in the Price, if the Person who bespoke it is willing to take it as it is. And if the Work was such that the Faults of it had Consequences which occasioned some Damage, the Workman or Undertaker of the Work would be liable for it. Thus, an Architect or a Mason is answerable for the Damages done by a Wall that has no good Foundation, or that is ill built, or which may have proceeded from other Faults in Masonry which he had undertaken *c.*

*c* Celsus imperitiam culpæ adnumerandam, libro octavo digestorum, scripsit. Si quis vitulos pascendos, vel sarcinendum quid, poliendumve conduxit, culpam eum præstare debere: & quod imperitia peccavit, culpam esse. Quippe ut artifex conduxit. l. 9. §. 5. ff. locat.

Tenebitur in id quod interest, nec ignorantia ejus erit excusata. l. 19. §. 1. ff. eod.

All the Masters of the said Company shall be bound and answerable for all Miscarriages, Faults and Abuses which shall be found in Works marked with their Punction or Mark. Ordinance of Henry II. 1555. Art. 6.

Altho this Ordinance relates only to a certain Profession, yet it may be applied here.

#### IV.

As there are Monopolies of Merchandize, so there are also Monopolies in Undertakings of Mechanick Works, if the Undertakers to whom application is made, combine together to insist all of them on a certain Price, and engage not to do it at a cheaper rate; and this kind of Monopoly is not less prohibited than that of Merchandize. And the Laws forbid and punish with greater Reason the Combinations of Undertakers who agree among themselves, that none of them shall undertake either to begin or to continue a Work which another of them had begun, or undertaken to do *d.*

*d* Nullus id proficere prohibeatur, quod ab altero ceptum opus fuerit: quod præsum cognovimus a quibusdam artificibus vel redemptoribus, nec iis quæ ipsi ceperint, finem imponentibus, nec alios id proficere sinentibus, atque inde damnum intolerabile inferentibus iis, qui domos suas fabricari cupiunt. Qui itaque hoc solo recusat opus perficere, quod ab alio antea inchoatum sit, is eandem poenam excipiat quam is extepit qui opus reliquit. l. 12. §. 8. C. de opere publ.

Jubemus ne quis illicitis habitis conventionibus conjuret, aut pacifcatur, ut species diversorum corporum negotiationis, non minoris quam inter se stauerint, venundentur. Edificiorum quoque artifices

3. Costs and Damages for Works that are faulty.

4. Monopolies and Combinations of Artificers.

ifices vel ergolabi, aliorumque diversorum operum professores & balneatores penitus arceantur pacta inter se componere, ut ne quis quod alteri commissum sit opprimatur, aut injunctam alteri sollicitudinem alter intercipiat, data licentia unicuique ab altero inchoatum & derelictum opus per alterum sine aliquo timore dispendii implere: omniaque hujusmodi facinora denunciandi sine ulla formidine, & sine iudiciali sumptibus. Si quis autem monopolium ausus fuerit exercere, bonis propriis expoliatus, perpetuitate damnetur exilii: cæterarum præterea professionum primates si in posterum, aut super taxandis rerum precibus, aut super quibuscumque illicitis placitis ausi fuerint convenientes hujusmodi sese pactis constringere, quadraginta librarum auri solutione percelli decernimus. *l. un. C. de monopol.*

It is likewise a Consequence of this Rule, that it is prohibited to Workmen to leave a Work they have begun.

Provideat magnificentia tua, ne quis redemptorum, aut fabrorum, aut artificum opus a se inchoatum relinquat imperfectum; sed ut accepta mercede opus quod incepit, perficere cogatur; vel omne damnum quod inde ædificare volens acceperit, & quidquid omnino dispendii sensit ex eo quod opus perfectum non fuerit, faciat. *l. 12. §. 8. C. de ad. priv.*

## V.

3. Reports made by skilful Artificers in Courts of Justice.

Seeing it often happens that there is occasion, either in a Court of Justice between Parties who are at Law together, or extrajudicially by the mutual Consent of Parties, to have Works viewed and examined in order to know whether they be of the Quality they ought to be of, or to make an Estimation of them, or to regulate the Costs and Damages occasioned by faulty Works; and that in order to have these sorts of Views and Estimations, one is obliged to call in Artificers and Handicraftsmen, that they may faithfully report what is within their Knowledge; it is a Duty incumbent on them to make these Reports exactly according to Truth and Justice. For in this Function they hold the Place of Judges, and when these Reports are made judicially, they are also obliged to swear they will make them according to their Conscience *e*.

*e* Fides bona exigit ut arbitrium tale præstetur quale viro bono convenit. *l. 24. ff. locat.*

Scari debet sententiæ arbitri, quam de re dixerit. *l. 27. §. 2. de recep. qui arb. recep.*

## VI.

6. General Duty of Artificers to observe the Regulations prescribed them.

We may set down as a general Duty of Artificers and Handicraftsmen, and which comprehends the Detail of their principal Duties, as to what concerns their Profession, that of observing the Statutes and Regulations of the Art they exercise; and the Policy established by the Ordinances for the Quality and Price of their Works, for their Wages, and for the whole Detail of

every thing relating to their Profession *f*.

*f* See the foregoing Section.

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## T I T. XIV.

## Of Husbandry, and the Care of Cattel.



F all the Arts and Labours of Men, the first in order of Time, and in the order of Nature, was that of Husbandry; and it was also the first which God commanded of Man, even while he was in the State of Innocence *a*. And after his Fall the Necessity of Food and Raiment made the Care of Cattle necessary, they yielding to Man divers Assistances for these two Wants. And Cattle are likewise in many respects serviceable for Husbandry.

It was these two Labours which the two first Children of the first Man shared between them *b*, and which for many Ages were the Occupation of the Men of the first Rank *c*; as they are at this day the Occupation of the greatest part of Mankind: So that there is not only no one Profession that employs so many Persons as Husbandry and the Care of Cattel, but the number of the Persons employ'd therein,

*a* And the Lord God took the Man and put him into the Garden of Eden, to dress it, and to keep it. Gen. 2. 15.

*I am no Prophet, I am an Husbandman; for Man taught me to keep Cattel from my Youth.* Zech. 13. 5.

*The Earth is satisfy'd with the Fruits of thy Works: He causeth the Grass to grow for the Cattel, and Herb for the Service of Man.* Psal. 104. 13, 14.

See the Treatise of Laws, chap. 2. num. 2.

Summæ prudentiæ & authoritatis apud Græcos Plato, cum institueret, quemadmodum civitas beate habitari possit, in primis istos negotiatores necessarios duxit. *l. 2. ff. de mund.*

*b* And Abel was a Keeper of Sheep, but Cain was a Tiller of the Ground. Gen. 4. 2.

*c* And Noah began to be an Husbandman. Gen. 9. 20.

*And Pharosah said unto his Brethren, what is your Occupation? And they said unto Pharaoh, Thy Servants are Shepherds, both we and also our Fathers. They said moreover unto Pharaoh, for so sojourn in the Land are we come; for thy Servants have no Pasture for their Flocks.* Gen. 47. 3, 4.

*Also he built Towers in the Desert, and digged many Wells, for he had much Cattel, both in the low Country and in the Plains; Husbandmen also and Vine-Dressers in the Mountains, and in Carmel; for he loved Husbandry.* 2 Chron. 26. 10.

surpasses



surpasses that of all the other Professions put together.

It is not necessary to explain what is the Necessity and Usefulness of Husbandry and of the Care of Cattel, seeing it is the same as that of Life and of Clothing. We shall only make one bare Reflection on the Difference between these two Professions and all the others, and which seems to have been the Cause of the two singular Advantages God has thought fit to annex both to the one and the other: The first of which is, that they are of all Professions the most necessary, the most natural, and of the most universal Use for Mankind; and the other, which is a Consequence of the first, that they are more removed from, and less exposed to the Occasions which excite the most dangerous Passions, and disturb most the inward Peace and Tranquillity of the Mind. So that if those who are employ'd in these Vocations, had the good fortune to be well instructed in the Principles of Religion, that they might join the Spirit thereof to those Advantages, they would esteem their Condition as one of the happiest, whereas the greatest part of them look upon it as the hardest.

There is this in common to all the Employments which take up the time and Thoughts of Men, and compose the Order of their Society; that they all tend to a publick Good upon this Principle, of the Order and Providence of God, who to unite Men together, renders necessary to all of them the several Labours, which he divides to every one for their own private Use as well as that of others. But of all these Labours, there is none of which the Use is of so large an Extent as that of Husbandry, and of the Care of Cattle, and which could be less spared. Thus, there is no other Labour which is of so great Consequence to the Publick, or serves to so necessary Uses, seeing there is no Person alive who is able to subsist without the help of these two Professions: So that for this reason they are as it were a primary Foundation or Element of the Life of Man.

'Seeing we are not to explain in this Book all the particular Rules which relate to the Exercise of Husbandry and the Care of Cattle, no more than the Rules of the other Trades and Handicrafts, and that we consider here in every one of them only the Relation it has to the Publick, and in general its

Use in the Society; we shall only explain in this Title two sorts of Rules concerning this Matter: One, of those which regard this Use and this Relation to the publick Order, and that shall be the Subject of the first Section; and the second shall be concerning the Duties of these two Professions with respect to that Order.

## SECT. I.

*Of the Use of Husbandry, and of the Care of Cattle, with respect to the publick Order.*

THE Reader may consult in relation to the Matter treated of in this Section, the 1st Section of the 7th Title.

### THE CONTENTS.

1. Definition of Husbandry.
2. Wherein the Care of Cattel consists.
3. Necessity of these two Professions.
4. Good Use of Husbandry.
5. Good Use of the Care of Cattle.

#### I.

By Husbandry is meant the Art of <sup>1. Definition of Husbandry.</sup> tilling the Ground in order to draw from it the several sorts of things which it may produce, and especially that which may serve for the Nourishment of Man, such as Corn, Fruits, and other kinds; or for his Clothing, such as Hemp, Flax, Cotton, and all other things *a*.

<sup>a</sup> There is an infinite number of things which the Earth produces without Tillage, such as many Plants, many Trees, Minerals, and other things; but it is only by Tillage that we draw from it the things most necessary for Life.

#### II.

By the Care of Cattle is understood <sup>2. Wherein the care of Cattel consists.</sup> here the looking after those sorts of Animals which serve for the Tillage and Manure of the Ground, and likewise for the Food and Raiment of Man; such as Oxen, Sheep, Horses, and others, which serve differently, some of them for all these Uses, and others only for a part of them *b*.

<sup>b</sup> No body is ignorant of the different Uses of these several sorts of Animals.

#### III.

Husbandry and the Care of Cattel <sup>3. Necessity of these two Professions.</sup> are Labours which of their own nature *are* necessary.

ture have a relation to the Publick; for the Labour of every one of those who employ themselves about either the one or the other, is not confined to their own particular Use, but the Labour of one Person alone serves for many, and both the one and the other Profession are essential to the Life of Man. Thus these two Professions are of the greatest Necessity and Usefulness in the Society of Mankind.

\* The first and great Necessity is that of Food and Raiment.

## IV.

4. Good Use of Husbandry.

For the good Use of Husbandry, it is of importance to the general Good of a Kingdom, as well as for the Interest of the particular Proprietors of Lands, that they cultivate therein what the Land is capable of producing that is most necessary and most useful, whether it be things consumed for Nourishment and Clothing, or others of which one may make a more profitable Commerce, whether it be within the Kingdom it self, or with Strangers: and it is the Business of the Government to take care thereof, and to give the proper Directions therein, as there is occasion *d*.

*d* See Tit. 7. Sect. 1. Art. 2, 3.

## V.

5. Good Use of the Care of Cattel.

It is the same thing with respect to the Care of Cattel, which ought to be suited to the Nature of the Country, to breed in it such Cattel as may best succeed in that Climate and Soil, and from which may be drawn the greatest Profit *e*.

\* Altho the greatest part of the Animals mentioned in this Title are brought up almost every where, yet there are some of them which succeed better in some Countries than in others.

## S E C T. II.

Of the Duties of those who are employed in Husbandry, and looking after Cattel.

## The CONTENTS.

1. A Duty to cultivate the Lands.
2. A Duty to use the several Cultures in their proper Seasons.
3. The Duty of caring for the Cattel.

## I.

THOSE who exercise Husbandry only for their own Use in their own proper Lands, are nevertheless obliged, in regard to the Publick, to cultivate them; not only for this general Reason, that it is the Interest of the Publick that every one should make a good use of that which belongs to him *a*; but also in consideration of the Consequence of Husbandry, and of the Necessity of drawing from the Earth Subsistence for the Life of Man. Thus the Government might oblige the Proprietors of Lands to cultivate them, and in case of their Neglect appoint others to take that Care, both in consideration of gathering from them the Fruits which they may produce, and likewise that they may be able to contribute their Share towards the publick Taxes *b*.

*a* Expediit enim Reipublicæ ne sua re quis male utatur. §. 2. *inft. de his qui sui vel al. jur. sunt.*

\* It was one of the Functions of the Censor at Rome, to take notice of, and to punish those who neglected to cultivate their Lands.

*b* Qui agros domino cessante desertos vel longe positos vel finitimos ad privatum pariter publicumque compendium excolere festinat, voluntati suæ nostrum novum adesse responsum: ita tamen, ut si vacanti ac deserti solo novus cultor infuderit, ac venis dominus intra biennium eadem ad suum jus voluerit revocare, restitutus punius quæ expensa constitent, facultatem loci proprii consequatur. Nam si biennii fuerit tempus emensum, omnis possessionis & domini carebit iure qui siluit. l. 8. c. de em. agr. deserto.

Si quis auctoritate nostri numinis de fundis patrimonialibus steriles sub certi canonis sollicitatione suscepit, firmiter eum volumus possidere: sub ejusdem tamen canonis solutione, quem nostræ majestatis auctoritas per annos singulos solvendum esse præscripsit: nullamque eos descriptionem sive adjectionem, aut innovationem in postera sustinere: quoniam nimis absurdum est eos qui nobis hortantibus fundos inopes atque egenos magno labore (impensio) aut exhausto patrimonio vix forte meliorare potuerunt, utpote deceptos, inopinatum onus suscipere: illudque velut quadam circumventionem deponere, quod si se daturos præcissent. fundos minime suscipere aut etiam colere paterentur. l. 16. *cod.*

See the Texts cited in the Preamble of Tit. 9. Sect. 2.

## II.

Those who undertake for others to cultivate their Estates, whether it be for Money, or for a Portion of the Fruits, or upon other Conditions, do contract, besides their Obligation towards the Publick, an Engagement to the Owners of the Lands; the Duties whereof oblige them to do every thing necessary for tilling, sowing, and reaping in the proper Seasons, observing the several Cultures according to the Quality

Quality of the Lands, every one of them in their proper time, and according to Usage and Custom *c.*

*Conductor omnia secundum legem conductio-  
nis facere debet, & ante omnia colonus curare debet,  
ut opera rustica suo quoque tempore faciat: ne in-  
tempestiva cultura deteriores fundum faciat. l. 23.  
§. 3. ff. locat.*

*Divi fratres rescripserunt, in venditionibus fisca-  
libus fidem & diligentiam a procuratore exigendam  
— sicut enim diligenti cura pretia prediorum am-  
pliantur: ita, si negligentius habita fiat, minui ea  
necesse. l. 3. §. 5. ff. de jure fisc.*

### III.

3. Duty  
of caring  
for Cattel.

The Duties of those who have the Care of Cattel consist in leading them out to Pasture, in watching them, and taking care that they be not stolen, nor go astray, that they do no damage, nor receive any, and in taking all the other care of them as is necessary or usual *d.*

*See in the Civil Law in its natural Order, the 2d Section of Damages occasioned by Faults which do not amount to a Crime, nor to an Offence.*



## TIT. XV.

### Of Communities in General.

**H**AVING explained the Distinctions of the different Orders of Persons, we proceed now to the Consideration of Communities, which are Bodies composed of many Persons for a publick Good, and which are considered in a State as holding the Place of Persons *a*; both because of their Functions which are proper to the whole Body which is formed by the Community, as also because those Bodies of Men have their Goods, their Affairs, their Rights, Burdens, and Privileges in the same manner as particular Persons. Thus Corporations of Towns, the Bodies of Universities, Chapters, Monasteries, and others, are Assemblies of many Persons linked to-

*a See Sect. 2. Art. 2. of this Title.*

gether for certain Functions directed to some publick Good.

The Use of these several sorts of Communities and Corporations was natural in the Society of Mankind, and has had the same Origin and Foundations as the Union of many Families, and of many Nations under one, and the same Government of Monarchy, or of a Commonwealth. For as it is the Multitude of the Wants of Men, and the Necessity every one has of the Assistance of many others, that has been the occasion of forming Monarchies and Commonwealths, as has been explained in its Place *b*; so the same Necessities and Wants have made it necessary to have still more, close and particular Conjunctions of many Persons together, which might form Companies and Corporations destined to different Uses for the Publick Good.

Seeing there can be no Companies nor Corporations without the Permission of the Prince, as has been explained in its Place *c*, and that they all tend to some publick Good, which makes them in some measure depend on the Temporal Government; these two Considerations are the reason why Ecclesiastical Bodies are comprehended under the Name of Communities, which are treated of in general under this Title: where we purpose to explain the Nature and Use of Communities, and their different Kinds, which shall be the subject Matter of the first Section; and we shall explain in the second the Rules which relate to the Order and Policy of the said Communities.

These two Sections shall contain the Rules common to all sorts of Communities and Corporations; and because there are some of them which have Rules peculiar to them which it is necessary to distinguish, we shall explain what relates to these sorts of Communities in the ensuing Titles.

*b See Tit. 1. Sect. 2. Art. 3.*

*c See Tit. 2. Sect. 2. Art. 14.*

## S E C T. I.

*Of the Nature and Use of Communities, and of their Kinds.*

## The CONTENTS;

1. Definition of Communities.
2. Three sorts of Communities.
3. Use of Communities.
4. Communities are a part of the Body of the State; and this Body is not of the number of Communities.
5. The Clergy ought not to be put in the number of Communities.
6. Three sorts of Ecclesiastical Communities.
7. All these Communities have a relation to the Temporal Government.
8. Corporations of Towns, and other places.
9. Courts of Justice.
10. Societies of Advocates.
11. Societies of Proctors, Registers and others.
12. Other sorts of Companies or Corporations.

## I.

1. Definition of Communities.

Communities are Assemblies of many Persons united into one Body, which is formed with the leave of the Prince, distinguished from the other Persons who compose a State, and established for the common good of those who are Members of the said Body, and which hath also a view to the publick Good of the whole Kingdom. Which is the Reason why Communities are perpetual, and which distinguishes them from the Companies or Societies treated of, under the Title of Partnership, in the Civil Law in its Natural Order: for those Partnerships are formed only for particular Interests, without any necessity of having the Prince's leave, and only for a certain time, or at most during the Life of the Partners.

*Collegia Romæ cetera sunt quorum corpus Senatusconsultis atque constitutionibus principalibus confirmatum est. l. 1. ff. quod in iusq. univ. nrm.*

## II.

2. Three sorts of Communities.

These Communities are of three sorts. The first is of those which regard chiefly Religion, such as the Chapters of Cathedral and Collegiate Churches, Monasteries and others. The second is of those which relate to the Temporal Government, as the Corporations of Towns, the Companies of Tradesmen, and others. And the third is of those which concern both Religion and the Temporal Government; as the Universities, which are composed of Professors of Divinity, and of Professors of human Sciences.

*V. tot. Tit. C. de sacros. Ecclesi.*

verment, as the Corporations of Towns, the Companies of Tradesmen, and others. And the third is of those which concern both Religion and the Temporal Government; as the Universities, which are composed of Professors of Divinity, and of Professors of human Sciences.

*c. V. tot. Tit. ff. ad municip. Tit. C. de pistor. & seq. de subsecutionibus.*

*d* See hereafter the Title of Universities.

See upon this Article, the last Article of the 2d Section of Persons in the Civil Law in its Natural Order.

## III.

The use of Communities is to provide, by the Assembly and Assistance of many Persons, for some good that is useful to the Publick. Thus, in the case of Ecclesiastical Societies, Chapters are established, not only for the common good of the Canons and Prebends, but also for the use of the Publick, which has an Interest in the Offices of the Church. Thus likewise for Communities which relate to Temporal Affairs, the Corporations of Towns are established, not only for the common good of the Inhabitants of the Towns, but also for the publick Good of the Kingdom, which is obtained many ways from that of the Towns, as will be seen in the following Title. Thus again for the Universities, which have a mixture both of Spiritual and Temporal Concerns, they are useful both for the good of the Church, and for the good of the State, as will appear in the Title of Universities.

*e* See the following Titles.

## IV.

Since Communities are composed of Persons of the same Order, or of different Orders, yet so as that no one of them comprehends Persons of all Orders; we ought not to place in the number of Communities and Corporations, the Body of the State, which comprehends all the Orders, and takes in every thing which regards the publick Good, whether in the Conduct of particular Persons, or in that of Communities, whereas these have all of them their bounds in some kind of particular Good.

*f* All the Communities here treated of are Members of the Body of the State, which consist of particular Corporations of certain sort of Persons.

## V.

Altho we may look upon the different Orders of Persons who compose the Body

5. The Clergy ought not to be put

P p p

in the  
number of  
Communi-  
ties.

Body of a State, to be as it were certain Bodies distinguished among themselves, and that some of the said Orders have Affairs belonging to them in common, as the Clergy; yet it is not proper to place them in the number of Communities: for by the word Community is understood only certain Bodies of Persons united together for continual uses, for which they have a right to meet whenever they see good. Thus Chapters, Corporations of Towns, Companies of Merchants, and those of Tradesmen, meet together for their Affairs whenever they please. But the Body of the Clergy does not assemble in the same manner without the leave of the Prince, neither do all the Officers of Justice belonging to the several Courts meet together, altho they be all of one and the same Order; but each Court of Justice makes a Body apart g.

g. See the following Articles.

## VI.

6. Three  
sorts of Ec-  
clesiastical  
Communi-  
ties.

The Ecclesiastical Communities are of three sorts. The first consists of those who are called the secular Clergy, because they are composed of Ecclesiasticks who live in the World among the rest of Mankind, every one on his own Patrimony or Income: and this Kind comprehends the Chapters of the Cathedral and Collegiate Churches, the Canons of which do not belong to any particular Order of Monks. The second is of the regular Communities, which are composed of Monks who make Profession by Vows to spend their days in common together under the direction of Superiors, and according to a Rule prescribed by their Founder, and approved by the Church. The third is that of Communities of Ecclesiasticks, who without taking upon them any Vows live in common together in order to serve the Church in their respective Functions under the Authority of Bishops, such as are some Congregations, and Seminaries for the Instruction of those who are to be promoted to Holy Orders, and of those who are to be employed in Missions, and other Vocations h.

h. All the Ecclesiastical Communities may be reduced to these three kinds.

[In England, since our Reformation from Popery, and the Dissolution of Monasteries, our Ecclesiastical Communities are reduced to the first four mentioned in this Article.]

## VII.

Altho all these sorts of Ecclesiastical Communities be chiefly intended for the service of Spiritual Affairs, yet they have also a relation to the Temporal Government, and are subject to many of the Rules thereof in several respects; and therefore the distinction of these Communities is a part of the Publick Law i.

i See the following Section.

## VIII.

In the order of the Communities which relate only to the Temporal Government, and of which the use is perpetual, the first with respect to the publick Order, and in consideration of the Multitude, are those which are composed of the Inhabitants of a Town, or of another place, for the Affairs which are common to them; and these sorts of Communities shall be the subject of the following Title, which see.

## IX.

We may place in the number of Companies and Communities of Lay-persons, and that in the first Rank, because of their Dignity, the Judges of the supreme Courts of Justice and others; for the said Courts have every one of them their Chiefs, and Members who compose them, and who are united and linked together, not only by their Functions to render Justice together, but also by their common Interests, which respect their Dignity, their Jurisdiction, their Rights, Privileges, Salaries, and other Affairs; such as to regulate among them the Discipline and Decorum necessary for maintaining their Dignities and Functions, the Times of their sitting, and all other things of the like Nature; and in a word to settle every thing which may concern the Interest and good order of Justice, the Administration of which is committed to them m.

m. The Judges of every Court of Justice make a Body, in which they are united by the double tie of their Functions to render Justice together, and of the Interests which are common to them in respect of their Offices.

## X.

As the Judges of the Courts of Justice have their common Affairs, and common Interests, which unite them together in Society; so the Advocates who exercise their Profession before the same Judges, have also their Society

10. Soci-  
ties of Ad-  
vocates.

Society for the Affairs which concern them in common.

2. Pensionem virorum disertissimorum Advocatorum Alexandrinæ splendidissimæ civitatis, quam de fori sui meritis & fisci patrono obtulerunt, merito admittentes, hæc sanctione determinimus quinquaginta, sive sexagesima, eorumque nomina pro tempore matricula conscribenda inscribi; & eos Advocacionis officium in judicio tam viri spectabilis Præfeti augustalis, quam viri spectabilis Ducis Egyptiaci luncis pærentibus adhibere: ceteros vero ultra memoratum numerum constitutos, apud alios judices ejusdem Alexandrinæ civitatis perorare: filiis scilicet statutorum in loco deficientium supernumeratis anteposendis. Egre dientem autem post biennium fisci patronum, contemplatione laborum, ex consularis moderatoris provincie dignitate decorari: licentia facultateque ei non deneganda, cum usus exegerit. Tam pro se quam pro filiis, parentibus, & uxoris, nec non etiam personis ex transverso latere usque ad quartum gradum constitutis, patronium suum adhibere. Quando autem fisci patronum mori contigerit, gradu eum sequentem sine ulla dilatione in locum ejus subrogari: heredibus defuncti nihil exinde sibi commodi acquiri posse sperantur, cunctis privilegiis quæ hæcenus habuisse nescuntur, nec non his, quæ suggestio tux magnitudinis continent, etiam in posterum intactis inviolatque servandis: quatenus hujusmodi delato eis liberalitate nostræ serenitatis honore possint in otio & tranquillitate reliquum vitæ suæ tempus peragere, nulla eis invidis ingerenda sollicitudine. l. 13. C. de advocat. divers. judicior.

Jubemus, advocacionem fori sui culminis centum quinquaginta (sicut antea constitutum fuerat) advocatus concludi: eundemque numerum, quoties vel professionis sine, vel morte, vel quocumque fuerit casu imminutus, electione magnificæ tux sedis impleri: ita ut in præsentem quidem, & hinc usque ad biennium adimpletionem supra definiti numeri subrogandi, sine ulla cohortalis aut cujuslibet deterioris conditionis questione succedant: salva videlicet adversus eos apparitoribus, si qua competit, actione: quam certum est postquam fisci patronatum officio impleto exegerint, evanescere. Post lapsum vero biennium foro tux magnificæ potestatis inseri postulantes, non aliter, nisi sub gestorum confessione minime eos cohortali conditioni subiacere patet, tam fuerit, admittantur. l. 17. eod.

V. Tot. h. I.

## XI.

11. Soci-  
ties of  
Professors,  
Registers,  
and others.

The Professors, belonging to one and the same Court of Justice, have also their Societies and Companies: and it is the same thing with respect to the other Persons who exercise any Function in the Order of the Administration of Justice, such as Registers, Public Notaries, and others.

These several Offices render common to all who exercise them, the Affairs which relate to their Functions.

## XII.

12. Other  
sorts of  
Companies  
or Corpora-  
tions.

There are likewise divers other Companies and Corporations of several sorts of Merchants, according to the differences of the Commerce they deal in, and according to the differences of Trades and Handicrafts. There are

V. l. II.

also divers Bodies of Artificers distinguished into several Companies.

Every one of these Companies or Corporations have their particular Statutes, established or approved by the Ordinances.

## SECT. II.

Of the Order and Policy of Communities and Corporations.

### The CONTENTS.

1. Communities ought to have the leave of the Prince.
2. Communities are in the place of Persons.
3. The changes of Persons do not change the Communities.
4. Two sorts of Communities.
5. Communities have their Rights, their Goods, and Statutes.
6. Communities are composed of Persons of certain Orders.
7. In what sense one can be a Member only of one Community.
8. The Goods and Rights of Communities belong not to particular Persons who compose them.
9. Communities name Syndicks for the management of their Affairs.
10. In what manner Communities deliberate about their common Affairs.

### I.

THE first Rule of the Order of the Policy of Communities and Corporations, is that they be established for a publick Good, and by the Order or Permission of the Prince; for, as has been mentioned in its proper place, all Assemblies of many Persons, without the said Order or Permission, would be unlawful.

See Tit. 2. Sect. 2. Art. 14, 15. Quibusdam collegiis, vel corporibus quibus jus coeundi lege permissum est. Sec. 4. §. 5. S. 12. ff. de jur. imm.

Sec religionis causa coire non prohibemus, dum tamen per hoc non fiat contra senatusconsultum, quo illicita Collegia coercentur. l. 1. §. 2. ff. de null. & corp.

Collegia si qua fuerint illicita, mandatis, & constitutionibus, & senatusconsultis annumerantur. In sancta civitate, nisi ex senatusconsulti auctoritate, vel Cæsaris, Collegium, vel quodcumque tale corpus coierit, contra senatusconsultum, & mandata, & constitutiones collegium celebrat. l. 3. eod.

### II.

Communities that are lawfully established, are in the place of Persons; and their Union, which renders common to all who are Members of them, their Interests, Rights and Privileges,

PPP 2

makes



makes them to be considered as one single Person. And as every particular Person exercises his Rights, manages his Affairs, and sues in Judgment; so it is the same with Companies and Corporations *b*.

6 Persona vice fungitur municipium & decuria.  
l. 22. ff. de fid. iuss.

Cum Senatus temporibus Divi Marci permiserit  
colleus legare, nulla dubitatio est, quod si corpori  
cum licet coire, legatum sit, debeatur cui munus non  
licet, si legetur, non valebit, nisi singulis legetur.  
Ii enim non quasi collegium, sed quasi certi homi-  
nes, admittuntur ad legatum. *L. 20. §. de reb.  
pub.*

See Sect. 2, Art. 15, of Persons.

See the Text cited on Art. 6. of this Section.

### III.

3. *The Changes of Persons do not change the Communities.*

Communities being established for a publick Good, the Cause of which always subsists, it is of their Nature to last always, so that the said Bodies subsist still the same, and are perpetuated without receiving any alteration, altho all the Persons of which they are composed should happen to be changed. And if it should happen that there remain one Person of the Corporation, he would represent it as the continued single, and would exercise the Rights thereof, which might subsist and go to him, until others should fill up the vacant places &c.

*e* In decurionibus vel aliis universitatibus nihil refert utrum omnes iidem maneant, an pars maneat, vel omnes immutari sint. I. 7. S. 2. §. quod cuiusq. univers.

Proponebatur, ex his iudiciis, qui in eandem rem dati essent, nonnullos causa audita excusatos esse, inque eorum locum alios esse sumptos, & querebatur, singulorum iudicium mutatio eandem rem, an aliud iudicium fecisset. Respondi, non modo si unus, aut alter, sed et si omnes iudices mutati essent, tamen & rem eandem & iudicium idem quod antea fuisset, permanere; neque in hoc solum evenire, ut paribus commutatis eadem res esse existimaretur, sed & in multis ceteris rebus; nam de legionem eandem haberi, ex qua multi decessissent, quorum in locum alii subjecti essent: & populum eundem hoc tempore putari, qui abhinc triennium annis fuissent, cum ex illis nemo nunc viveret; itaque navem si adeo late refecta esset ut nulla tabula eadem permaneret, quæ non nova fuisset, nihilominus eandem navem esse existimari. Quod si quis putaret paribus commutatis aliam rem fieri, fore ut ex ejus ratione nos ipsi non idem essemus, qui abhinc anno fuissimus; propterea quod, ut Philosophi dicerent, ex quibus particulis minimis constitueremus, hæc quædam ex nostris corpore deciderent, alique extrinsecus in eandem locum acciderent; quapropter, cujus rei eadem species cõfisteret, rem quoque eandem esse existimari. l. 76. ff. de iudiciis c. uti quis.

¶ Sed si universitas ad unum regit, magis admi-  
nitur potestatem convenire & convenit, cum in  
omnium in unum rediit, & fit nomen univer-  
sitaris. l. 7. in f. ff. quod unusq.

• If all those who compose a Society or Community should chance to die, and it were such a Com-

munty as were necessarily to be re-established, the Places would be filled up with Persons who are duly qualified to be Members thereof. Thus, for example, if all the Canons or Prebendaries of a Chapter should happen to die by a Plague, or in a War, their Places would be filled up by those who have the Collation of the Prebends, and the new Prebendaries would compose the same Chapter.

#### IV.

It is necessary to distinguish among the Communities those which consist only of Persons who have a right to assist in the Assemblies where their Affairs are to be transacted, and those which, besides the Persons called to assist at their Assemblies, comprehend other Members who have not this right. Thus for example, a Chapter comprehends only the Dignitaries, and the Canons, or Prebendaries, who compose it, and who have all of them a right to deliberate upon their common Affairs, if the defect of Age, or some other Cause does not exclude them. Thus likewise the Corporation of a Town comprehends all the Inhabitants, who are all of them interested in the common Affairs of the Corporation. But it being impossible to assemble together the whole multitude to consult about their Affairs, a certain number is chosen from among them, who represent the whole Body of all the Inhabitants, consult and deliberate about the Affairs of the Community, and direct what they think proper to be done therein, as shall be explained in the following Title *e.*

\* This is a Consequence of the different Na-  
tures of Communities.

V.

It is common to all Societies and Communities to have their Rights, their Affairs, their Privileges, and to have also their Statutes and Regulations, whether they have been prescribed to them by the Prince, or that they have a right to make them themselves. But in this last case, they can make no Statutes but what are conformable to the Laws of the Kingdom, and to good Manners, and such as tend to the good of the Community, and to the benefit which the Publick ought to reap from it: and if it be necessary that their Statutes should be confirmed by a Court of Jus-

Quibus permittitur esse corpus habere collegii  
societas, sive cuiusvis alterius societas nomine,  
proprium est, ad exemplum reipublice habere et  
communes, autem communem. L. I. §. 1. §. 944  
capit. 107.

4. Two  
sorts of  
Communi-  
ties.

5. Communities have their Rights, their Goods, and Statutes.



tice, they will not have their effect till they have been so confirmed *g*.

*g* Sodales sunt, qui ejusdem collegii sunt quam Græci *ἱταί* vocant, his autem potestatem facit lex pactiōem quam velint sibi ferre, dum ne quid ex publica lege corrumpant. *l. ult. ff. de colleg. & corpor.*

Quidquid his disponent ad invicem firmum sit, nisi hoc publicæ leges prohibuerint. *l. 1. in f.*

### VI.

6. Communities are composed of Persons of certain Orders.

Seeing Communities are established for an end that is common to all who are to be Members thereof, and which regards the good that is to be expected from each respective Community; no Person is capable of being a Member of any of them but such to whom the said end is also common, and who are of that Order or Profession which distinguishes the Members of that Community from others. Thus in order to be a Member of a Community, or of a Company of Tradesmen, one ought to be of the Profession of the same Company; which Company ought to be established by the permission of the Prince *h*.

*h* Neque societas, neque collegium, neque hujusmodi corpus passim omnibus haberi conceditur. Nam & legibus & senatusconsultis & principalibus constitutionibus ea res coarctetur. Pauris admodum in causis concessa sunt hujusmodi corpora: ut ecce vectigalium publicorum sociis permissum est corpus habere, vel aurifodinarum, vel argenti fodinarum & salinarum. Item collegia Romæ cetera sunt quorum corpus senatusconsultis atque constitutionibus principalibus confirmatum est, veluti pistorum & quorundam aliorum, & naviculariorum qui & in provinciis sunt. *l. 1. ff. quod cuius univers.*

Immunitas tribuitur scilicet eis collegiis vel corporibus, in quibus artificii sui causa unusquisque assumitur, ut fabrorum corpus est, & si qua eandem rationem originis habent: id est, idcirco instituta sunt, ut necessariam operam publicis utilitatibus exhiberent. *l. 5. §. 12. ff. de jure imm.*

### VII.

7. In what sense one can be a Member only of one Community.

It is not enough for being of the number of those who compose a Community, to be of the Order or Profession of the Persons who compose it; but it is also necessary that he who has a mind to be one of the Members of a Community or Corporation, be not a Member of another Community which may have Rights or Interests opposite to those of the Community into which he would enter, or of which the Deliberations ought to be concealed from other Persons for good Reasons. Thus he who should profess two Trades, could not be a Member of the two Companies, both of the one and the other. But as for Communities whose Interests do not clash, and which are

such as that one may without any inconvenience be at the same time a Member both of the one and the other, this Rule ceases. Thus an Officer belonging to a Court of Justice, may be either the Head or one of the Members of the Corporation of a Town; and Merchants, Artificers, and also all others may be of the said Corporation, altho they be Members of others *i*.

*i* Non licet autem amplius quam unum collegium licitum habere, ut est constitutum & a Divis fratribus, & si quis in duobus fuerit, rescriptum est eligere eum oportere in quo magis esse velit. *l. 1. §. ult. ff. de colleg. & corpor.*

### VIII.

The Goods and Rights of a Community or Corporation, belong in such a manner to the Community, that none of the particular Persons who are Members of it have any Right or Property in them, or can any way dispose of them: which is the Reason that seeing the said Communities are perpetual, and always supported for the public Good, their Goods and Rights which are their support, ought always to remain to the Corporation. And 'tis this that makes the said Goods and Rights inalienable *l*. But if the Community were

8. The Goods and Rights of Communities belong not to the particular Persons who compose them.

*l* See the last Article of the 2d Section of Persons, the Remark there made upon it, and the Texts there cited.

Jubemus nulli posthac Archiepiscopo in hac urbe regia sacrosanctæ orthodoxæ Ecclesiæ præsententi nulli œconomo, cui res Ecclesiastica gubernanda mandatur, esse facultatem fundos vel prædia sive urbana, sive rustica, vel postremo immobiles, aut in his prædiis colonos, vel mancipia constituta, aut annonas civiles cujuscunque suprema vel superstitius voluntate ad religiosas ecclesias devolutas, sub cujusque alienationis specie ad quancunque transferre personam. Sed ea etiam prædia dividere quidem, colere, augere, & ampliare; nec ulli illidem prædiis audere cedere. Verum si testamentum quocunque jure factum, seu codicillo, vel sola nuncupatione, legato, seu fideicommissum, aut mortis causa donatione, aut alio quocunque ultinio arbitrio, aut certe inter viventes habita largitate, sive contractu venditionis, sive donationis, aut alio quocunque titulo quiscquam ad præfatam venerabilem Ecclesiam patrimonium suum, partemque certam patrimonii in fundis prædiis, sive domibus, vel annonis, mancipiis, & colonis, eorumque pecuniis voluerit peruenire: inconcussa ea omnia sine ulla potius immutatione conserventur. Sciatis nulla sibi occasione vel tempore, ad vicissitudinem beneficii colluctari aut gratias referendæ, donandi, vel certe hominibus volensibus emere, alienandi aliquam facultatem permissam: nec si omnes cum religioso Episcopo & œconomo clerici in eorum possessionum alienationem consentiant, ea enim, quæ ad beatissimæ Ecclesiæ jura pertinent, vel posthac fortis pervenerint, tanquam ipsam sacrosanctam & religiosam Ecclesiam, intacta convenit venerabiliter custodiri: ut sicut ipsa religio & fidei mater perpetua est, ita ejus patrimonium jugiter sevetur illam. *l. 14. c. de sacros. Eccles.*

dissolved,

dissolved, either by order of the Prince, or otherwise; those who were Members of it, would take out what they had of their own in the said Community *m.*

*m* Collegia si qua fuerint illicita mandatis & constitutionibus & senatusconsultis dissolvuntur, sed permittitur eis cum dissolvuntur pecunias communes si quas habent dividere, pecuniamque inter se partiri, l. 3. in princip. ff. de colleg. & corp.

## IX.

9. Communities name Syndicks for the Management of their Affairs.

Since those who compose a Community, cannot all act together for their common Affairs, and exercise their Rights, they may chuse some of their own number to whom they may intrust the Direction and Care of their Affairs, under the name of Syndicks, Directors, or other Names, according to the Usage and Quality of the respective Communities; and the said Directors have their Functions regulated by their Nomination, and exercise them pursuant to the Rules explained in the Title of Syndicks, Directors, and other Administrators of Companies and Corporations.

*n* Quibus permittitur est corpus habere collegii, societatis, live cuiusque alterius, eorum nomine proprium est ad exemplum reipublice habere res communes; arcam communem, & actorem live Syndicum per quem tanquam in republica quod communiter agi fierique oportet, agatur, ff. l. 1. §. 1. ff. quod cuiusque universi.

Syndicus fiat. l. 1. §. 2. ff. de mun. & honor.

See in the Civil Law in its Natural Order, the Title of Syndicks.

## X.

10. In what manner Communities deliberate about their common Affairs.

The Meetings of Communities, whether for the Nomination of those who are to have the Management of their Affairs, or for other Causes, are held according to their Statutes and Regulations, whether as to the number of the Persons who are to assist at the said Meetings, or for the number of Votes necessary to pass a Resolution, as has been explained in the Title already quoted of Syndicks. We have likewise explained the Rules which relate to the Engagements of Communities by the Ministry of their Governours and Directors, and the other Rules which may regard Communities, besides those which are explained under this Title.

See in the Civil Law in its Natural Order, the Title of Syndicks.

## T I T. XVI.

Of the Corporations of Towns, and other Places; of Municipal Officers, and of the Domicil of every Person.

HERE is this Difference between the Corporations of Towns or other Places, and all the other sorts of Communities and Corporations; That whereas all the others are confined to certain Orders of Persons, those of Towns and other Places regard divers Orders of different Professions, Judges, Advocates, Merchants, and others who are Inhabitants of the Towns, and who have all of them their common Affairs, for the dispatch of which they are permitted to assemble together: as for example, to order what relates to the repairing of Market-Places, the paving the Streets, the supplying the Town with Water, the Expence of publick Entertainments for the Bishops or Governours of the Place, and all other sorts of Affairs. But altho these sorts of Interests be common to all the particular Inhabitants of the Places, yet they have not all of them a Share in the Direction of Affairs; but they are transacted by those who are appointed to take this Care, as Mayors, Sheriffs, Aldermen, Common Council-men, and others, according to the different Usages of the Places.

These are the Offices which are called Municipal, because they cannot be exercised but by the Inhabitants of the Places who are capable of them, and who have no Exalts, and who, for this reason, are called in Latin, *Municipales*.

It is because of this variety of Interests and common Affairs of Towns and other Places, that we have distinguished this Matter from that of Communities and Corporations in general, which has been explained in the foregoing Title, and we shall explain in this what is peculiar to Corporations of Towns and other Places, which comprehend, first, the Distinctions of their several sorts of Affairs; and, in the second place, the Distinctions of the

the Persons intrusted with the Management of them, their Functions and Duties: And this shall be the Subject of the two first Sections. And because the Care of those Affairs cannot be committed to any besides the Inhabitants of the Places, who are to be called to that Trust in the manner prescribed by the Regulations and Usages of the Places; we shall explain in a third Section the matter of Domicil, which causes every one to be reckoned an Inhabitant of the Place where he has his Domicil or Abode, and that he ought to bear his Proportion of the Burdens of the said Place *a*. And this Matter of the Domicil, the chief and principal use whereof is in settling and distributing the Burdens and Offices in Towns and other Places, hath also other different Uses: As, for example, that of regulating before what Judge one ought to cite those whom he intends to sue at Law; for it is before the Judge of their Domicil that they ought to be sued. But seeing the Matter of the Domicil of every Person hath its Order more naturally in this Title than in any other, we shall discuss it here; and explain in a fourth and last Section what concerns the Election to Municipal Offices, and the Causes which exclude or exempt Persons from them.

There is likewise another Matter, which is a part of that treated of under this Title, and which might have had a place here, and which some will be of opinion ought not to have been omitted; and that is the Order and Rank of Precedency among Persons called to those Municipal Offices; because Disputes about Precedency in such Cases are very frequent: but seeing we have treated in general of Rank and Precedency in the 3d Section of the 9th Title of the several Orders of Persons, we need not repeat here what has been there said on this Subject.

*a* Ejus patrie oneribus respondere debet cui re tributum esse commemorat. l. 1. C. quemadm. civ. mund. judic.

## SECT. I.

Of the several sorts of common Affairs in Towns and other Places.

### THE CONTENTS.

1. The Policy of publick Places.
2. Choice of Persons to take care of the publick Places.

3. Imposition and levying of Monies for the publick Use.
4. Other sorts of common Affairs in Towns.
5. Extraordinary Affairs of Towns.
6. Government of Hospitals.
7. Erecting of Universities and Colleges.
8. Establishment of Physicians.
9. Divers Officers of Towns for the several Affairs.

#### I.

THE same Cause which has linked Men together in Society, for supplying the Wants of every one by the Concourse and Assistance of many others, has produced the first Societies of Villages, of Boroughs, and of Towns: And the first Business of every one of the said Societies has been to regulate the Order thereof by some Policy, whether the same has been at first established by the Prince, or by the People themselves; and it has been by means of this Policy that they inclosed them with Ditches and Walls, that they built Towers, and erected Guard-Houses for the defence of the Inhabitants, that they built Churches and set apart Church-yards, Market-places, and other Places for publick Uses. So that we may say that the first sort of Affairs of Towns is this Policy, which establishes and preserves these sorts of Places and Conveniences *a*.

*a* Tutela civitatis instructa mutorum praesidio providebitur. l. un. C. de expens. lud. publ.

In what manner soever a State hath had its Origin, and People have begun to build Towns and other Places, those who assembled in them could not do it but by uniting themselves by a Policy which might regulate all those publick Conveniences.

#### II.

These first Wants have been attended with a Necessity of choosing Persons who should take care, either to build or keep in repair, these sorts of Places and Conveniences, and who should find out Funds for defraying the Expences necessary for that purpose. Thus the manner of making this Choice of the Persons to be set over the said Functions, has been a second sort of common Affairs *b*.

*b* The Necessity of publick Places has rendered the Function of taking care of them necessary.

Viarum publicarum cura pertinet ad magistratus. l. 2. §. 24. ne quis in loc. publ.

Constituti sunt eodem tempore quatuor viri qui curam viarum gererent. l. 2. §. 30. ff. de orig. jur.

#### III.

The Necessity of Expences for these first kinds of common Affairs, has made

1. The Policy of publick Places.

2. Choice of Persons to take care of the publick Places.

3. Imposition and levying of it Monies for

the publick  
Laws.

it necessary to lay Taxes on the Inhabitants, and to have Permission from the Sovereign to regulate and to levy them; and it has been necessary also to impose and levy the publick Taxes for the Expences of the Nation: and the imposing and levying these two kinds of Taxes has made it necessary to employ Persons in that Business *d*, and also in gathering in the Revenues of the Estates belonging to the Communities of Towns, and other Places, which have any Estates belonging to the Community, and which may be called the Patrimony of the said Towns, in order to distinguish it from the Monies levied on the Inhabitants by the Permission of the Prince.

*c* The Necessity of these Expences has made these Impositions necessary, which cannot be laid on without the Permission of the Prince.

Vestigalia sine Imperatorum præcepto, neque præfidi, neque curatori, neque curia continere, nec præcedentia reformare, & his vel addere, vel diminueret licet. *l. 10. in princ. ff. de publ. et vestig.*

Vestigalia quæcumque quilibet civitates sibi ac suis curiis ad augmentum suarum solatia quaerunt: siue illa functionibus curialium ordinem profutura sint, siue quibuscumque aliis eandem civitatum utilibus designantur: firma his, atque ad habendum perpetua manere præcipimus, neque ullam contrariam supplicationum super his molestantur formidari. *l. 10. C. de vestigal. et comm.*

*ff. l. 1. C. vestig. non.*

*d* Publicani dicuntur qui publica vestigalia habent conducta. *l. 12. §. 3. ff. de public. et vestig. l. 1. §. 1. id. l. 16. ff. de urb. signif.*

#### IV.

4. Other  
sorts of  
common  
Affairs in  
Towns.

All these first kinds of Affairs have been followed by others of a different nature. For it was necessary to repress those who attempted any thing against the publick Places, either by encroaching upon them, causing any damage to them, hindring the use of them, or rendering the same inconvenient as otherwise, which required Regulations of Policy to guard against such Attempts. It was necessary to constrain those who are called to publick Offices to serve in them; or to enquire into their Excuses, if they had any to al-

*e* All these sorts of Affairs are necessary Consequences of the Establishment of Towns and other Places.

Prætor ait ne quis in loco publico staret, invensum locum invadens, qui ex re quid sit statim daret. *l. 2. in princ. ff. de re quid sit.*

*ff. l. 1. l. 2.*

*f* Illas sedes in que sedes civitatis sunt videlicet. *l. 1. ff. de urb. signif. et ff. quid.*

Si quis Magistratus in municipio creatus munere instructus fuerit, per præfides munus agnoscat. *l. 1. ff. de mun. et honor.*

ledge; to audit the Accounts of those who have collected the publick Monies of the Town, to recover the Remainder that is in their hands *h*, and to apply the same to the publick Service. It was necessary to oblige the particular Inhabitants to pay their Share of the Contributions, to judge of the Exemptions and Privileges of those who should pretend to any without a just Title *i*, to adjust other Affairs arising from these first, to chuse Persons for the constituting of a Council in which all these sorts of Affairs may be examined, and in which they may consult about the means of maintaining the publick Interest; and this Council was necessary likewise for the other Affairs, which shall be mentioned hereafter.

*g* Qui non habet excusationem etiam invitus cogitur. *l. 13. §. 2. ff. de voc. et excus.*

*ff. l. 12. ff. de mun. et honor.*

*h* Reliquos vestigalium. *l. 9. §. 2. ff. de publ. et vestig.*

*ff. l. 16. §. 12. id.*

*ff. l. 2. in princ. C. de deb. civit.*

*i* Omnis excusatio sua equitate nititur. Sed si pretenduntibus aliquid sine iudice credatur, ut passim sine temporis prævisione prom. cuique liberum permittum fuerit se excusare: non erunt, qui munera necessaria in rebus publicis obeant. Quare & qui liberorum incolatum iure a numeribus civilibus sibi vindicant excusationem, appellationem interponere habent. *l. 1. ff. de vacat. et excus. mun.*

#### V.

Besides the ordinary Affairs mentioned in the preceding Articles, there fall out extraordinary Affairs; as, for example, the Entry of the Prince, or of a Bishop or Governour into a Town; an Order to make Bonfires and other Rejoicings on account of some happy Success to the Publick, it being of service to the publick Good, that the People who ought to feel the Effects of it, should partake also of the Joy; which unites the particular Inhabitants among themselves, and engages them to contribute to the Support of the State. And there happen also Occasions to provide for the Safety of the Inhabitants in times of War *l*, of the Plague, of Famine and Scarcity; which makes it

5. Extraordinary  
Affairs of  
Towns.

*l* These extraordinary Affairs are Consequences of the Policy of Towns, and of the Affairs of the State.

Et nomen de ministeriis caducorum et belli oratione, & actione civitatis, qui in se populus Latinus movebat, necessarium duximus, patres conscripti, in publicis vestigiis imperii, temporibus ab omni Romano recedens: ut quod, belli calamitas innotuit, hoc per totum populum. *l. 1. C. de ea. l. 1. l. 2.*

necessary

necessary to lay on Impositions for the Subsistence of the poor. And it is necessary also to make Provision for the passage and quartering of Troops, that those who exercise this Function may take care that the Inhabitants who are subject to this Burden bear it every one in his turn *m*. And all these sorts of extraordinary Affairs require that Persons be appointed to have the Direction of them.

*m* Eas milites quibus superveniens hospitium præberi in civitate oportet, per vias ab omnibus quos id munus contingit, suscipi oportet. l. 3. §. 13. ff. de munar. et honor.

# VI.

6. Govern-  
ment of  
Hospitals.

We may likewise reckon among the Affairs of Towns, the Foundations and Government of Hospitals of several sorts, those for the Whole as well as the Sick, both of the one and the other Sex, and the choice of Persons to have the Direction of them.

*n* The Foundations and Government of Hospitals belong equally to Religion and to the Civil Government. See the 18th Title.

# VII.

7. Presi-  
dence of Uni-  
versities  
and Col-  
leges.

The Care of training up the Youth in Learning and Morality, is likewise an Affair belonging to Towns; and it is for this purpose they have established in Towns, Universities, or Colleges, and that in Places not able to bear the Expence of a College, they invite Preceptors and Professors to settle among them, by granting them Privileges *p*; and the Ordinances of France have provided for the maintenance of a Preceptor in the Towns where there are Cathedral or Collegiate Churches, having set apart the Revenue of a Canonship for a Preceptor *q*; which gives the said

*p* See the Title of Universities.

*p* Sed et si magis alieni decuriones decreverint, decretum id nonnunquam ullius erit momenti: ut puta si ob liberalem artem suam constitutum, vel ob medicinam; ob has enim causas licet constitui salaria. l. 4. §. ultim. ff. de detr. ab ecc. fac.

See the Text cited on the following Article.

Exceptis qui liberalium studiorum amatores sunt, et qui medendi cura funguntur, decretum decretum medicis nonnulli tribui potest. l. 1. C. de decr. datur.

*q* Besides the Prebend for the maintenance of

Towns a Right to see that the said Ordinances be duly observed, and the said Fund applied to the Purposes for which it is intended.

*r* Divine to read Lectures in Divinity, let there be another Prebend for the maintenance of a Preceptor, who shall be obliged, in consideration of that Allowance, to teach the young Children of the Town. Ordinance of Orleans, Art. 9.

# VIII.

It is also for the common Good of Towns, and of other Places where there are no Physicians, to engage some of that Profession to come and settle among them, by granting them several sorts of Privileges, such as Exemptions from paying Taxes, or collecting them, or from other Burdens of the like nature, and even by settling Salaries upon them, if the Place is able to be at such Expence *r*.

*r* Medicos & maxime archiatros, vel ex archiatris Grammaticos & Professores alios literarum, Doctores legum una cum uxoribus & filiis, necnon & rebus quas in civitatibus suis possident, ab omni functione, & ab omnibus muneribus, vel civilibus vel publicis, immunes esse precipimus, & neque in provinciis hospites recipere, nec ullo fungi munere, nec ad judicium deduci nec eximi, vel exhiberi, vel injuriam pati; ut si quis eos vexaverit, poena arbitrio judicis prestatetur. Mercedem etiam eis & salaria reddi jubemus, quo facilius liberalibus studiis & memoratis artibus multos instituunt. l. 6. C. de Profess. & Med.

# IX.

It is for the direction of all these different sorts of Affairs, and for all others, that they appoint in Towns Persons to take care of them, and distribute those Functions which are called Town Offices, among several Persons, who may be distinguished by the Name of Town Officers; and even as to some of them, they may appoint Persons with the bare Name of Commissaries, as for Functions of a short duration, such as those mentioned in the 5th Article; and the Distinctions and Functions of all the said Persons shall be the subject Matter of the ensuing Section *s*.

9. Divers  
Officers of  
Towns for  
the several  
Affairs.

*s* Partialis munera. l. 1. §. 2. ff. de munar. & honor.

See Art. 1. of the following Section.



## S E C T. II.

*Of the Distinctions of Persons put into Municipal Offices, of their Functions, and of their Duties.*

## The CONTENTS.

1. Two sorts of Functions for the Direction of the Affairs of Towns. Functions of the first sort.
2. Functions of the second sort.
3. Church-Wardens.
4. Functions of Mayors and Aldermen.
5. General Duties of Mayors and Aldermen.
6. General Duties of other Officers in Towns.
7. These Offices bind the several Persons employed in them for the Consequences of the whole.

## I.

1. Two sorts of Functions for the Direction of the Affairs of Towns. Functions of the first sort.

**T**HE Functions of the Government of Towns and other Places, are of two sorts: The first, of those which regard in general the Care of the Affairs of the Corporation, and which are managed by the chief Officers of the Towns, the Mayor, Sheriffs, Aldermen, or others, whose Business is to represent the Corporation, to sue for its Interests in a Court of Justice, and to defend it. The second is of the particular Functions explained in the Article which follows *a*.

*a* Personalia, civilia sunt munera defensorum, ut syndicus fiat, legatus, ad census accipiendum, vel patrimonium singulorum recipiendum, &c. et, camolatorum agere, exhibitorum annonæ ac similibus, cura prædiorumque publicorum, frumenti compariendi, aqueductus, æquorum Circensium spectacula, publica vix munitiones, arce frumentaria, calculationes thesaurorum, annonæ divisa, &c. quæcumque sit etiam ista sint finitæ. Et his etiam quæ continentur in ista per legem, non sunt civi-  
bus ex consuetudine longa, intelligi possunt. l. 1. §. 2. §. de mun. c. 10.

Altho many of the Functions mentioned in this Text be not in use with us, yet the Example of them may be applied to such as are.

See the following Article.

## II.

2. Functions of the second sort.

This second sort of Functions comprehends four kinds of them, which it is necessary to distinguish, and which are exercised by four sorts of Officers of the Town. The first is of those who compose the Town-Council, or the Assembly considered as the Body of

the whole Inhabitants of the Town, in which their Affairs are taken into deliberation, and in which the Persons are named who are to execute the Offices and Functions belonging to the Town: And this Assembly, which is permitted by the Ordinances *b*, is composed in the manner regulated by the different Usages of the Places. The second is of those who are named Judges of the Policy, and are to decide all Causes relating to the same, in conjunction with the Officers of Justice, the Mayors and Sheriffs *c*. The third is that of Persons employed in the distribution and collecting of the public Taxes, such as Assessors and Collectors, or even the Sheriffs or Aldermen in the Places where they exercise the said Function *d*. And the fourth takes in all the other Functions mentioned in the preceding Section, according as the different Usages of the Places may distinguish the said Functions, and distribute them to several Persons under different Names *e*.

*b* See the Edit of Cremsieux in 1526, Art. 26.

*c* See Art. 71, 72. of the Ordinance of Moulins.

*d* See Tit. 5. Sect. 2. Art. 9.

*e* See the Text cited on Art. 1.

## III.

Among the several Functions of this second sort, we may distinguish those which relate to the Care of the Revenues and Offices of Parish Churches, the collecting of the said Revenues, the Discharge of the said Offices, the making Reparations, the buying, keeping and preserving the Ornaments, the looking after the Affairs of the Parish, whether it be in Courts of Law or elsewhere; and the rendering an Account of what they have received, and what they have expended. And this Function, which is exercised by those who are called Church-Wardens, or by other Names, in Towns or other Places where there is only one Parish, may be reckoned a Town-Office: but in the Towns where there are more Parishes than one, the Office is limited to every Parish *f*.

*f* Proinde & si custodiam tabularum aditus, vel tabularum suscepit, dicendum est teneri cum interdicto. l. 3. §. 2. §. de tab. exhib.

Quia si custodiam aditus, vel tabularum suscepit, tenetur cum interdicto. l. 3. §. 2. §. de tab. exhib. et si custodiam aditus, vel tabularum suscepit, tenetur cum interdicto. l. 3. §. 2. §. de tab. exhib.

Quia si custodiam aditus, vel tabularum suscepit, tenetur cum interdicto. l. 3. §. 2. §. de tab. exhib.

rius, debuit sit, an etiam his, qui in locum eorum succedunt. Respondit, secundum ea que proponerentur, ministerium nominatorum designatum, exaratum datum templo. l. 2. §. 1. ff. de app. leg.

Oeconomus vasorum sacrorum custodes. l. 21. C.

de sacros. Eccl.

v. Nov. 40. c. 7.

Cimeliarcha. d. c.

## IV.

4. Functions of Mayors and Aldermen.

The Functions of Mayors, Aldermen, Sheriffs, or others who are placed in the first Rank in Corporations of Towns, consist in general in taking care of all the Affairs of the Corporation, in seeing that other Officers perform their Functions, and giving them all the Assistance and Encouragement they are able; in receiving and laying out the Monies which belong to their Province, and giving an Account thereof; in assembling the Town-Councils as often as there is occasion, whether it be to nominate Persons to the Functions mentioned in the preceding Articles, and in the first Section, or to consult about the several sorts of Affairs; in calling to the said Councils or Assemblies the Officers of Justice who ought to preside therein according to the Ordinances *b*. And seeing the Mayor and Aldermen, and Common Council have the principal Direction of the Affairs of Towns, and that they represent the whole Body, whatever comes to their knowledge in relation to the Affairs of the Town, whether the same be intimated to them by order of the Prince or otherwise, is held to be sufficiently known to the Inhabitants who compose the Towns, and who have intrusted to the said Officers the Administration of their Affairs *i*.

Proprie municipales appellantur munera participes, recepti in civitate, ut munera nobiscum facerent. l. 1. §. 1. ff. ad municip.

Gestum in republica, accipere debemus pecuniam publicam tractare, sive erogandam decernere. 4. 2. §. 1. 104.

Vestigalia publica locare. d. l. §. 4.

Rempublicam administrare. l. 8. ff. de muner. et honor.

v. Tit. civ. ff. ad munic. c. sup.

*b* See the Edict of Crenieux in 1536. Art. 26.

That of June in 1559. Art. 7.

*i* Municipales intelliguntur scire quod sciunt hi quibus summa Republice commissa est. l. 14. ff. ad municip.

## V.

5. General Duties of Mayors and Aldermen.

Those general Functions mentioned in the foregoing Article, oblige those who are charged with them to Duties suitable to the said Ministry; which implies a Vigilance in all the several

Affairs, whether they relate to the Government or good Order of the Towns, to the Distribution or levying of the publick Taxes, or to any other sort of Functions; Fidelity in administering Justice without respect of Persons; Obedience to the Orders of the Prince; Execution of the Orders directed to them, as also of the Orders of Courts of Justice, where the Judges who administer Justice may stand in need of the help of their Ministry; Fidelity in voting in the Town Councils for the common Good; not to give their Votes in the Elections of the Magistrates and Officers of the Town, or of other Persons, to the different Functions that have been explained, except to such as are duly qualified for the same; to maintain the Interest of the Publick against all Attempts of particular Persons, and to promote on all Occasions the common Good: And all this without any Prevarication, either for their own private Interest, or that of their Relations, or other Persons, whose Interests being opposite to those of the Publick might any way concern them, either because of Advantages accruing from thence to themselves, or to those other Persons whose Interest they have at heart; or for fear of incurring the Displeasure of others, or exposing themselves to Consequences hurtful to them. But in the Cases where this Fear may have some just Foundation, which might excuse them from executing their Functions themselves; their Duty would be to abstain from them, and to leave them to those to whom the Care thereof belongs in case of their Default *l*.

*l* All these Duties are natural and necessary Consequences of the Functions of the said Offices.

## VI.

The Duties of all the other Persons mentioned in this and the foregoing Section, consist in exercising their Functions with a View to the publick Good, and in performing every one of them according as the Laws and Rules direct, if there be any particular Laws or Orders relating to the said Functions, and with the Probity and Fidelity which Duties of all kinds demand. Thus they who are charged with distributing and levying the publick Taxes, ought to discharge the said Function according to the Rules explained in Tit. 5. Sect. 8. Thus those who are called to the Functions of the Civil Government, ought to observe in the discharge thereof the

6. General Duties of other Officers in Towns.



Rules explained in the preceding Article, and those which concern in general the Duties of Judges, which shall be explained in the second Book *m*.

*m* This is a Consequence of the Functions of the said Offices.

## VII.

7. These Offices bind the several Persons employed in them for the Consequences of the whole.

When a Municipal Office, such as that of Sheriff, Alderman, or other, is divided between two or more Persons, who are to execute one and the same Function, such as that of taking care of some particular Affairs, the collecting of Money, or other Business, they are all of them bound jointly and severally to answer to the Corporation for the Care of one another in collecting the Monies, or discharging the other Functions, in case any Neglect or Male-Administration can be imputed to any one of them. For being all of them elected to answer to the Corporation for these Functions, they ought to exercise them together, and to answer for one another. And if they divide the Administration between them, and one of them acquits himself ill of that part he undertook, the other will nevertheless be answerable for the Male-Administration of his Collegue; for he has no body to blame but himself for the Confidence he put in him who has misbehaved in his Trust. But no body can be prosecuted for the Deed of others, till the Person who did act, has been first discussed, unless it were that without such Discussion his Insolvency were apparent, and that he became insolvent before his Office was expired, and before the Corporation could sue him; for if he himself, or his Sureties, were solvent at the time he went out of his Office, his Collegues would not be accountable for his Deed. Thus the Engagement of these Offices in the hands of many Persons, is the same with that of a Tutorship in the hands of several Tutors.

*Imperator Titus Antonius Labeo, rescriptis magistratum esset in divitiarum, et pecuniarum communis, quod sic intelligi oportet, ut ita deinde collegae periculum adferbant. Si neque ab ipso qui gessit, neque ab his qui pro eo interveniunt, res solvari possit, de solvendo non sit, honore decedat, alioquin si persona vel capite sit honesta, vel solvendo sit, quo tempore conveni potuit, nunguam in id quod administravit, tenetur. l. 1. ff. de municip.*

*Et si quibus finis non ponatur, et si non capere possint portionem manentem, et si non pro vili portione, sed in solidum expellere obligantur. Cum autem de indemnitate conveniatur, oportet prius eas personas administravit, et mox si solvendi non possint, collegae conveniant. l. 1. c. de municip. end.*

If the Administration of two or more Officers in a Town, called to the same Functions, be not divided; and if it were, for example, to collect Monies, and that they ought to make the Collection jointly together, their Engagement ought undoubtedly to be for the whole, unless one of them mistrusting the Circumstances of his Collegue should refuse to act with him, and take Measures for his own Security: But if the Administration were divided, and one of them, for example, were to collect the Monies in one quarter of the Town, and the other in another, it would be but just that, seeing their Functions have nothing in common together, every one should only answer for what he himself was charged with, as it is regulated in the Case of Tutors.

See Sect. 3. of Tutors, Art. 28, 29.

## SECT. III.

Of the Rules whereby to judge of the Domicil of every Person.

## CONTENTS.

1. The place of the Origin is to be distinguished from that of the Domicil.
2. Domicil in the place where one executes an Office.
3. Domicil in the place where one follows his Studies.
4. Principal Domicil of every one.
5. The Domicil is independent of the Propriety of the House.
6. One can have only one principal Domicil.
7. Every one has the Liberty of chusing his own Domicil.
8. Every one bears the Charges of the Place where he has his principal Domicil.
9. It may happen that one has no Domicil at all.
10. The Domicil of a Son who is under his Father's Authority, is that of his Father.
11. The Domicil of the Wife is that of the Husband.
12. The Widow retains the Domicil of her deceased Husband, unless she changes it.
13. Spousals do not change the Domicil of her that is espoused.
14. Domicil of Exiles.

IT is necessary to distinguish between the place of one's Origin and the place of one's Domicil: we call that the place of one's Origin, where the Father had his Domicil, and this Origin receives no manner of change. And we call the place of one's

*Tam originem unamquamque sequimur. l. 36. c. de donat.*

Abode

Abode or Habitation, a Domicil. And because one may for divers Reasons, and at divers Times, have Habitations in different places, it is necessary to distinguish the Domicils of several sorts, as will appear by the Articles which follow.

## II.

2. Domicil in the place where one executes an Office.

Those who have any Dignity, Office, or Employment, which obliges them to a Residence in a certain place, have in that very place a kind of Domicil, which yet may not be the only one, if out of the times which require Residence they have elsewhere another Habitation *b*. Thus, for example, an Officer of a Court who is obliged to attendance only for the half of the Year, an ancient Receiver who is bound to serve by turns with another once every other Year, or once in three Years, and who is obliged to reside in the place of his Receipt during the Year in which he officiates, an Officer of War, or a Soldier, who are in actual Service, have their Domicils, as to their Service in their Offices and Employments, in the places where they serve, and they may have their ordinary Abode in another place.

*b* Senatores in sacratissima urbe domicilium dignitatis habere videntur, l. 8. C. de incol. et ubi quisq. dom. hab. vid.

Senatores licet in urbe domicilium habere videntur, tamen & ibi unde oriundi sunt, habere domicilium intelliguntur: quia dignitas, domicilium adjectionem potius dedisse quam permansisse videtur. l. penult. ff. de Senat.

*c* Miles ibi domicilium habere videtur ubi meret. l. 23. §. 1. ff. ad mun.

## III.

3. Domicil in the place where one follows his Studies.

Those who follow their Studies in another place than that of their ordinary Abode, as in some University, have also two Habitations or Domicils. For besides their ordinary Domicil, they have that of the place in which they follow their Studies *d*.

*d* Nec ipsi qui studiorum causa aliquo loco morantur, domicilium ibi habere creduntur, nisi decem annis transactis eo loco sedes ibi continuerint. l. 2. C. de incol.

According to the usage in France, this Domicil in the place of an University during the time of one's Studies, gives the Students the Privilege of having the Causes in which they are concerned tried before the Judge who is called Conservator of the University, as it is regulated by the Ordinances, which is also derived from what is contained in the Text of the Roman Law which we have just now quoted.

See the Ordinance of Louis XII. of August 1498. and July 1499.

## IV.

The principal Domicil of every one, is that which he makes the last and center of his Affairs; in which he keeps his Writings, and which he does not leave but on some particular occasions; from whence when he is absent, he is said to be from home, or when he returns to it, he is said to be come home; where he passes the chief Festivals of the Year; where he bears the Charges of the Place, and where he enjoys the Privileges of those who are Inhabitants of it *e*.

*e* Incolas domicilium facit. l. 7. C. de incol. et ubi quisq.

Eam domum unicuique nostrum debere existimari (constituam) ubi quisque sedes & tabulas haberet, suarumque rerum consuetudinem tenuisset. l. 203. ff. de verb. signif.

Si quis negotia sua non in colonia, sed in municipio semper agit, in illo vendit, emit, contrahit, eo in foro balneo spectaculo utitur: ibi festos dies celebrat, omnibus denique municipii commodis, nullis coloniarum fruitur: ibi magis habere domicilium quam ubi colendi causa diversatur. l. 27. §. 1. ff. ad munic.

In eo loco singulos habere domicilium non ambigitur, ubi quisque et fortunam suam suamque constituit. Unde rursus non in discessurus si nihil avocer: unde cum profectus est, peregrinari videtur, quo si rediit, peregrinari jam desinit. l. 7. C. de incol. et ubi quisq. dom. hab. vid.

## V.

Since the Domicil is the place of one's Residence, it is all one as to the Domicil of a Person, whether he reside or dwell in his own House, or in that of another, which he hires or possesses by some other Title *f*. And for the same Reason that it is the Residence which makes the Domicil, he who has a House of his own in a place where he does not reside, has not for all that his Domicil there *g*.

*f* Domum accipere debemus non proprietatem domus, sed domicilium. l. 5. §. 2. ff. de injur.

Sive in propria domo quis habitaverit, sive in conducta vel gratis. d. §.

*g* Spolia domus possessio que in aliena civitate comparatur, domicilium non facit. l. 17. §. 12. ff. ad munic.

## VI.

According to the definition of Domicil explained in Art. 4. it is difficult for a Person to have two Domicils; for to have two in the meaning of that Definition, it would be necessary that in each of the said Domicils, the Seat and Center of one's Affairs should be divided, so as it might be said he resided equally in the one and in the other, and that it could not be distinguished by this Proof, and the other Proofs explained

4. Principal Domicil of every one.

5. The Domicil is independent of the property of the House.

6. One can have only one principal Domicil.

plained in the said 4th Article, which were the principal of the two Domicils *b*. But whether one may have two principal Domicils, or may not, yet one may have two or more Domicils, in the sense of the three first Articles. If the question were about subjecting to the Offices and Charges of a place, him who has or should seem to have two Domicils, one in one place, and another in another place, he could not be made subject to the Offices and Charges but of one Place alone; thus, he could not be named Sheriff or Alderman, nor assessed for his Personal Estate in two several places *i*.

*b* Celsus libro primo Digestorum tractat: si quis instructus sit duobus locis aequaliter, neque hic quam illic minus frequenter commoretur, ubi domicilium habeat, estimatione animi esse accipiendum. Ego dubito, si utrobique destinato sit animo, an possit quis duobus locis domicilium habere, licet difficile est. *l. 27. §. 2. ff. ad municip.*

Viris prudentibus placuit, duobus locis posse aliquam habere domicilium, si utrobique ita se instruxit, ut non ideo minus apud alteros se collocasse videatur. *l. 6. §. 2. eod.*

Labco indicat eum, qui pluribus locis ex æquo negotietur, nusquam domicilium habere. Quosdam autem dicere refert, pluribus locis eum incolam esse, aut domicilium habere: quod verius est. *l. 5. eod.*

*i* The Usage in France does not allow the imposing of these sorts of Personal Offices and Charges on one and the same Person in two different places, altho the said Person should have a Domicil in each Place; so that we do not observe the Roman Law in this matter, which subjects Persons to the Offices and Charges of both Domicils.

Incola & his magistratibus parere debet, apud quos incola est: & illis, apud quos civis est. Nec casum municipalis jurisdictioni in utroque municipio subiectus est, verum etiam omnibus publicis muneribus fungi debet. *l. 29. ff. ad municip.*

Cum re Bibulum origine, incolam autem apud Berytiot esse propriam: merito apud nundique civitates muneribus fungi compellitur. *l. 1. §. 1. ff. ad municip. de orig.*

## VII.

7. Every one has the liberty of choosing his own Domicil.

Every one is at liberty to chuse the place of his Domicil, and to change likewise his Habitation, as he pleases, unless he were prohibited to dwell in some certain place, or that he were by order of the Prince confined to a certain place *l*. But if his Change of Abode were made to avoid the Offices of the place of Domicil, or the payment of Taxes, it ought to be accompanied with two Circumstances: *one*, of a real Translation of Domicil without docti-

*l* Nihil est impedimento quominus quis ubi velit habeat domicilium, quod si interdum non sit. *l. 21. ff. ad municip.*

and fraud *m*; and the other, that this Translation of Domicil had preceded the Nomination to the Office to which one is called *n*, such as that of Sheriff, Alderman, or other, or the Assessment for the Tax, or other Imposition, according as the Laws and Custom of the Country may prescribe the manner of the said Change, either as to the time of making it, or the manner of publishing it *o*.

*m* Domicilium re & facto transferatur non nuda contestatione, sicut in his exigitur qui negant se posse ad munera ut incolas vocari. *l. 20. ff. eod.*

Incola iam muneribus publicis destinatus nisi perfecto munere incolas renuntiare non potest. *l. 34. eod.*

*n* Non tibi obest si cum incola esses, aliquod munus suscepisti, modo si antequam ad alios honores voceretur, domicilium transtulisti. *l. 1. C. de incol. & ubi quis domic.*

*o* By the Usage in France there are several Regulations touching the manner of transferring one's Domicil, and the effect it ought to have, and particularly with regard to those who transfer their Domicil from a place that is subject to Taxes, to a place that is exempt from them.

## VIII.

As it is by the fixing one's principal Abode in a Place, that he has there his Domicil; so it is by the said Domicil that he is made an Inhabitant, and becomes subject to the Offices and Charges of the Place *p*.

*p* Municipis dicimus sine cuiusque civitatis civem. *l. 1. §. 1. in f. ff. ad municip. & de incol.*

## IX.

Altho one cannot live without being in some place or other, yet one may be without a Domicil; for the Domicil being a fixed Abode in a certain Place during the time it may last, he who should leave his Domicil in order to go and settle another in a remote Place, might during the Voyage by Sea or Land, have no Domicil at all in any Place *q*.

*q* Difficile est sine domicilio esse quemquam. Puto autem hoc providere posse, si quis domicilio relicto naviget, vel iter faciat, quaerens quo se conferat, atque ubi constituat: nam hunc puto sine domicilio esse. *l. 27. §. 2. ff. ad municip.*

There are Vagabonds, who without travelling in quest of a Domicil, have really and truly no certain Domicil at all, but go wandering about the Country, seeking for opportunities to pass and steal.

## X.

There are Persons who are so strictly linked together, that the Domicil of the one is that of the other. Thus the Conjunction which Children have with their Fathers, makes the Domicil of the Children to be the same with that of their Fathers, until the Children be of

10. The Domicil of a Son who is under his Father's Authority, is that of his Father.

Age

Age to settle themselves in some other Place, which they may do, whether they be emancipated or not; for they may have good Reasons for making such a Change.

Placet etiam, filios familias domicilium habere posse, non utique ubi pater habuit, sed ubicunque ipse domicilium constituit. l. 3. §. 1. 4. ff. ad municip.

See the 5th Article of the 2d Section of the Title of Persons in the Civil Law in its Natural Order.

§ Since the Domicil of the Fathers is the place of the Origin of the Children, as has been said in the first Article, and that the Domicil of Children is also the same with that of their Fathers, if they do not change it, as is said in this Article, it follows that the Children whom their Fathers at their Death leave in Minority, retain their Domicil where that of their Fathers was, and they ought consequently to bear the burdens of that Place, such as Taxes and others, if they are not exempt from them: but since before they attain to the Age of Majority, there may happen Changes which change the Domicil of the Children that are under Age, those to whom such Changes do happen, may notwithstanding their Minority, change their Domicil, and fix it somewhere else. Thus for example, if a Minor gets an Office, or is engaged in an Employment which he may exercise in his Minority, or with a Dispensation of Age, the Residence which he will be obliged to make in the Place where he is to execute his Office or Employment, will oblige him to fix his Domicil there. Thus the settlement of a Minor in another place than that of his Origin by means of a Marriage, may be made under Circumstances which demand, and which consequently permit the Change of his Domicil.

#### XL

11. The Domicil of the Wife is that of the Husband.

The Conjunction of the Wife with the Husband, making as it were one Person out of the two, the Domicil of the Husband is that of the Wife, and she can have none other, because she is bound to cohabit with him. Thus a Wife who had her Domicil in another place than that which was the Dom-

cil of her Husband, quits her own Domicil by her Marriage.

Item rescripserunt mulierem quamdiu nupta est, incolam ejusdem civitatis videtur, cujus maritus ejus est, & ibi, unde originem trahit, non cogi muneribus fungi. l. ult. §. 3. ff. ad municip.

Mulieres honore matronarum erigimus, genere nobilitamus, & forum ex eorum persona statuimus & domicilia mutamus. l. 13. C. de dignit. l. ult. C. de incol.

See the 2d Article of the first Section of the 7th Title of Persons, in the Civil Law in its Natural Order.

#### XII.

Widows retain the Domicil which their Husbands had at the time of their Death, and do not take up again their first Domicil by the bare effect of their Husbands Death, but they may either return to their first Domicil, or chuse another; and if they marry again, their Domicil will be that of the second Husband.

12. The Widow retains the Domicil of her deceased Husband, unless she changes it.

Vidua mulier amissi mariti domicilium retinet, exemplo clarissimæ personæ per maritum factæ; sed utrumque aliis intervenientibus nuptiis permutatur. l. 22. §. 1. ff. ad municip.

Sin autem minoris ordinis virum postea fornicata fuerint, priore dignitate privata, posterioris mariti sequuntur conditionem & domicilium. l. ult. C. de incol.

#### XIII.

Marriage does not change the Domicil of the Wife until it be accomplished. Thus, during the Spousals, the Woman that is betrothed retains still her own Domicil; and if any Cause breaks off the intended Marriage, there is no Change in her Domicil.

13. Spousals do not change the Domicil of her that is espoused.

Ea quæ desponsa est, ante contractas nuptias suum non mutat domicilium. l. 32. ff. ad municip.

#### XIV.

Those who are confined to a certain Place by Order of the Prince, do not change their Domicil, and they retain that which they had before their Exile; and if they are subject to Taxes, they continue to pay them in the place where they did formerly reside, but they have in the place to which they are confined another kind of Domicil by the necessity they are under of residing there during the time that is prescribed them.

14. Domicil of Exiles.

Domicilium habere potest & relegatus eo loco unde arcetur, ut Marcellus scribit. §. 27. §. ult. ff. ad municip.

Relegatus, in eo loco in quem relegatus est, interim necessarium domicilium habet. l. 22. §. 3. sed.

## S E C T. IV.

*Of the Nomination or Election to Municipal Offices, and of the Causes which exclude or exempt Persons from them.*

## The CONTENTS.

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32. *He who does not insist on his Exemption, does not lose his Right in another Case.*
33. *The Office does not go to the Heir of him who dies before he enters upon the exercise of it.*

## I.

THE Municipal Offices mentioned here, are those which oblige to some publick Functions, such as the Administration of the Affairs of the Corporation, the serving as Assessors or Collectors of the publick Taxes, and other Offices of the like nature, different from those Charges which imply no exercise of a publick Function, but which oblige barely to some Contribution or Expence, and regard the Goods of Persons without relation to any Service the Publick reaps from their Industry; such as the Charges of Contribution to Taxes and other Impositions, those of quartering Soldiers, and others of the like kind *a*.

*a* Munerum civilium quædam sunt patrimonii, alia personarum. l. 1. ff. de muner. et honor.

## II.

The Municipal Offices, which are the subject matter of this Section, are of two sorts: one of those which have some Dignity annexed to them, such as that of Sheriff; or others which have the Administration of Affairs, whether they engage the Persons who serve in them to any Expence, or to no Expence at all. The other is of those which have only Functions without any Dignity, such as that of collecting the publick Taxes, if it is separated from other Functions *b*.

*b* Honor municipalis est administratio reipublice cum dignitate gradu, sine cum tempore. Officium functione

*1. What are Municipal Offices.*

*2. Two sorts of Municipal Offices.*

erogatione contingens. l. 14. ff. de mun. et honor.

Publicum munus dicitur quod in administranda republica cum sumptu sine titulo dignitatis subimus. d. l. 5. 1.

One must not expect to find in these Texts, nor in the others of the Roman Law which regard the several sorts of Municipal Offices and their Functions an exact Conformity to our Usage; for these Offices and their Functions are different in our Usage from what they are in the Roman Law.

### III.

3. Difference between Municipal Offices and others.

There is this Difference between the Municipal Offices and the other sorts of Offices, such as those of Judges, of Officers employed about the Revenue, and others called Officers of the Crown; that as the Functions of these are committed to them by the Prince, they have for their Title to their Offices the Patents or Commissions which the Prince gives them; whereas the Functions of Municipal Offices being committed to those who exercise them by the Corporations whom the said Functions concern, they are called to those Offices by the Election of the Persons who have a Right to nominate.

c. Observare oportebit Magistratus, ut decurionibus solemniter in curiam convocatis, nominationes ad certa munera faciant. l. 2. C. de decur.

### IV.

4. The Manner of naming to Municipal Offices.

The Election or Nomination to Municipal Offices is made in every Town, and in every Place, not by all the Inhabitants together, for that would cause too great a Confusion, and such a Concurrence of People would be unlawful d; but by those who according to the Regulations and Usages of the Places are named to compose the Assembly in which the Nomination ought to be made; and the Nomination ought to be by Plurality of Voices, observing therein the Formalities prescribed by the respective Usages and Regulations, whether it be as to the manner of voting, and counting the Plurality of Voices, or as to the number necessary for composing the Assembly. And if the Person named to the Office was one of the Assembly, he may be reckoned to make up the number e; for they might have named and

a. See Tit. 16. Sect. 4. Art. 14.

b. See Tit. 16. Sect. 4. Art. 15.

c. ff. de mun. et honor. l. 1. §. 1.

d. ff. de mun. et honor. l. 1. §. 1.

e. ff. de mun. et honor. l. 1. §. 1.

f. ff. de mun. et honor. l. 1. §. 1.

g. ff. de mun. et honor. l. 1. §. 1.

h. ff. de mun. et honor. l. 1. §. 1.

i. ff. de mun. et honor. l. 1. §. 1.

j. ff. de mun. et honor. l. 1. §. 1.

k. ff. de mun. et honor. l. 1. §. 1.

l. ff. de mun. et honor. l. 1. §. 1.

m. ff. de mun. et honor. l. 1. §. 1.

n. ff. de mun. et honor. l. 1. §. 1.

o. ff. de mun. et honor. l. 1. §. 1.

p. ff. de mun. et honor. l. 1. §. 1.

q. ff. de mun. et honor. l. 1. §. 1.

r. ff. de mun. et honor. l. 1. §. 1.

ther Person, and it was uncertain whether he should be named, or another f.

king up the number required to a legal Nomination, that there should be two thirds of those who ought to make a full Meeting.

Ordo non aliter habeatur quam duabus partibus adhibitis. l. ff. de cur. ab orb. facti. l. 3. ff. quod cujusc. univ. nom.

Nominationum forma vacillare non debet, si omnes, qui albo curie detinentur, adesse non possunt, ne paucorum absentia, five necessaria, five fortuita, debiliat quod a majore parte ordinis salubriter fuerit constitutum: cum duae partes ordinis in orbe positae totius curiae instar exhibeant. l. 46. C. de decur.

f. The Number sufficient in Elections depends on the Usage of the Place.

### V.

Seeing the Municipal Offices oblige to Functions which regard the publick Interest of Towns and other Places, it is just to call to them only the Inhabitants of the said Places g, and such as are capable of them, observing a due Proportion between the Condition of the Persons, their Estates, their Industry, and the different Functions of the Offices h, and calling those who are qualified to serve in them, every one in their turn.

g. Ejus patriae oneribus respondere debes, cui re attributum esse commemoras. l. 1. C. quemad. tri. mun. indic.

See Art. 25.

h. De honoribus five muneribus gerendis, cum quaeritur, in primis considerata Persona est ejus cui deferitur honor five muneris administratio: item origo natalium, facultates quoque an sufficere injuncto muneri possint, item lex secundum quam muneribus quisque fungi debeat. l. 24. §. 3. ff. de mun. et honor.

Ad subeunda patriae munera dignissimi meritis & facultatibus curiales eligantur, ne tales forte nominentur qui functiones publicas implere non possint. l. 46. C. de decur.

Civilia munera per ordinem pro modo fortunarum sustinenda sunt. l. 40. C. de mun. patriam.

### VI.

Whether we consider in Municipal Offices the Honour and Dignity which may be in them or the Labour and Expenses which their Functions may require, it is but just that the said Inconveniences and Advantages should be divided successively among the Inhabitants, and that they be all called to them every one in their turn, according as they may be capable of them i, as has been said.

i. Vetus est scriptura, per quam munus civilium nonnullis et vicibus praestant, omnes civibus necessitatibus aggregantur, ut ut nec consensu civium vel curiae, praestant cuiusque immunitas valeat: sed

R 11

omnes



said in the foregoing Article: But we must except from this Rule some Persons who cannot be called to the publick Offices, as shall be explained by the Articles following.

omnes ad munerum societatem conveniantur. l. 19. C. de decur.

See Art. 20. and the Texts there cited.

## VII

7. Three Causes which exclude or exempt Persons from publick Offices.

There are three sorts of Persons who ought not to be called to publick Offices: Those who are exempt from them *l*; those who are incapable of them thro Infirmities, or by reason of other Impediments *m*; and those who are unworthy of them: as shall be explained by the following Articles.

*l* See Art. 8, 9, 10.

*m* See Art. 11, 12, 13; &c. and Art. 26.

## VIII.

8. Two sorts of Exemptions.

There are several Causes of Exemption from Municipal Offices, and they may be reduced to two kinds; one, of the Exemptions by Privilege *n*; and the other is that of the Excuses which serve for obtaining a Dispensation *o*.

*n* See the two following Articles.

*o* See Art. 17, 18, &c.

## IX.

9. Exemptions on account of Privilege.

Privileges are annexed either to the Person, or to the Quality. Thus for the Person, he who for some Merit, or some Service, has obtained a Favour of the Prince which may entitle him to this Exemption, either expressly, or by a Consequence of some general Privilege, cannot be called to these kinds of Offices. Thus for the Quality, Gentlemen are exempted from being Collectors of the Taxes *p*.

*p* Curialibus consortis consulescentes, consensus ut nemo sibi blandiatur, &c. concertis modis sese liberum esse existimet, sed pro nobis forme tamquam docti possit liberum esse curialibus consulescentes, condonantur omnibus antea quibus, quibus non antea quibus, sit praesens laetitia, et praesens de antiquandis. Si quis igitur vel iustitiam, participantem honorem fuerit consecutus, et praesens de antiquandis, condonantur omnibus antea quibus, quibus non antea quibus, sit praesens laetitia, et praesens de antiquandis.

Item qui constitutus est in officio, non debet in officio, memoria praesens, vel epistola vel libellus, item eos qui ibidem praesens de antiquandis, condonantur omnibus antea quibus, quibus non antea quibus, sit praesens laetitia, et praesens de antiquandis. Si quis igitur vel iustitiam, participantem honorem fuerit consecutus, et praesens de antiquandis, condonantur omnibus antea quibus, quibus non antea quibus, sit praesens laetitia, et praesens de antiquandis.

## X.

We may place in the number of Persons exempt by Privilege, those who have settled in any Town or other Place, to exercise their Profession there; as Physicians, or Persons who make Profession of teaching some Art or Science, or of setting up an Academy for Riding, Fencing, or other Exercises; if their Settlement there was upon that condition, that they should enjoy the said Exemption *q*.

*q* See Tit. 4. Sect. 7. Art. 6. of this first Book.

See Sect. 1. Art. 8. of this Title, and the Texts there cited.

## XI.

The Excuses which exempt from Municipal Offices, are of several sorts, and we may set down as the first, Minority because of the Weakness of Age, which not allowing Minors to have the Management of their own Affairs, ought with much more reason to exempt them from taking care of the Affairs of others, and is in them a kind of Incapacity, which does not suffer that the publick Interest be entrusted to their Management *r*. But if the Municipal Office to be disposed of were such as had only some Honour or Dignity annexed to it without any Administration, it would be sufficient if he who is called to it was past the Age of four and twenty, and entered into his five and twentieth Year, at which Age he may enter upon the Exercise of an Office of this kind *s*.

*r* Ad Rempublicam administrandam ante vicesimum quintum annum, vel ad munera quae non patrimonii sunt vel honores, minores adiri non oportet. l. 8. ff. de mulier. & honor.

*s* Annus vicesimus quintus coepit pro pleno haberi. Hoc enim in honoribus favoris causa constitutum est, ut pro plenis iudicatos accipiamus; sed in his honoribus in quibus Republicae quidvis non committitur. Caeterum cum datum publico honorem ei committitur, non est dicendum eum qui prius periculis minoris, &c. ff. de mulier. & honor.

## XII.

The same Cause of Weakness of Age which ought to exempt Minors from Municipal Offices, ought also to exempt those who are past seventy Years of Age. For at that Age, bodily Weakness, and the Infirmities and Inconveniences which attend it, are a just Cause for being exempted from serving in Offices where Functions do not suit with Persons of that Age, which even

10. Exemptions granted by Towns.

11. Exemption because of Minority.

12. Exemption on account of old Age.

of itself, without any other Infirmities, renders those who are so far advanced in Years incapable of Business &c.

*Si ultra septuagesimum ætatis annum patrem tuum esse præses provincie perspexerit, eum personalium munerum vacatione peritui providebit. l. 10. C. de decur.*

Maiores septuaginta annis a tutelis & muneribus personalibus vacanti, sed qui ingressus est septuagesimum annum nondum egressus hac vacatione non utetur, quia non videtur major esse septuaginta annis qui annum agit septuagesimum. l. 3. ff. de jure tutum.

## XIII.

13. Dis-  
eases that  
excuse  
from these  
offices.

Those who labour under habitual Diseases, or other Infirmities which suffer them not to act even in their own proper Affairs, and who could not possibly bestow that Vigilance, Application and particular Care which Municipal Offices require, are excused from them, and even incapable of them. Thus the Blind, the Deaf, the Dumb, the Consumptive, and those who labour under other Distempers of the like nature, cannot be called to these Offices; but the Gout is not reckoned among the Infirmities which serve as an Excuse, unless the same be in such a degree as to hinder one from acting as the Business would require, and that it would be reckoned inhuman not to admit of such a one's Excuse &c.

*Si ea cœcitate pater tuus oppressus est, ut utriusque oculi aciem prorsus amisit, levamentum personalium munerum sentiet. l. 1. C. qui morbo se excus.*

Cum auriculari morbo debilitatum te esse dicas, juxta juris publici auctoritatem a personalibus muneribus vacationem habebis. l. 2. eod.

Lunibus captus, aut surdus, aut mutus, aut furiosus, aut perpetua valetudine tentus, tutelæ seu curæ excusationem habet. l. 1. C. qui morbo se excus.

Altho this last Text regards only an Exemption from a Tutorship, yet the same Equity requires that perpetual Infirmities should be sustained as a good Excuse for not serving in Municipal Offices.

*Podagræ quidem valetudo nec ad personalium munerum prodest excusationem; verum cum ita te valetudine pedum afflictum dicas ut rebus propriis intercessum commodare non possis, rector Provincie si allegationibus tuis fidem adesse perspexerit, ad personalia munera te vocari non patietur. l. 3. C. qui morbo se excus.*

We have not set down in the Article what is said in this last Text in relation to the Gout, that it does not excuse except when it is such, that he who labours under it is not able to act in his own Affairs. For besides that People are willing to undergo Inconveniences in their own proper Concerns, which it would not be just to expect they should be willing to bear with in the Affairs of others; a Man has al-

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ways a Facility and Willingness to act in his own Affairs, altho he be indisposed: and there are many Persons whose proper Affairs are less cumbersome than the Functions of Municipal Offices. So that it would seem that this Text ought to be understood only of those who have not long and frequent Fits of the Gout, and who in their long Intervals from Pain may be able to act freely; which has induced us to think that it is by Prudence and Humanity that we ought to judge of the Effect which the Excuse founded on this Distemper ought to have.

## XIV.

The Number of Children is likewise a Ground of Excuse, for besides that this domestick Charge may render the Exercise of a Municipal Office too inconvenient, it is just to favour those who have many Children, in consideration of the Advantage the State reaps from the Multitude of the Persons who compose it. Thus, those who have many Children are justly dispensed with from bearing Municipal Offices, whether we judge of the Effect which this Excuse ought to have by the Circumstances of the number of Children, of the Condition of the Persons, of their Estates, and by other Considerations, according as it should appear equitable to have regard to this Ground of Excuse, altho there were no Rule that fixed the number of Children necessary to serve as an Excuse, or that the number were fixed by some Rule or Usage, as we see it differently regulated in divers Places, in some Places fixed at a greater number, and in others at a lesser; but to make up the Number of Children.

14. Excuse  
because of  
the num-  
ber of  
Children.

*Eos qui cujuscumque sexus liberos quinque habeant impetrata semel vacatione potiri convenit. l. ult. C. de his qui num. lib.*

Patribus qui filios vel filias quinque habuerint, promissa legibus immunitate servanda. d. l.

Cura extruendi vel reficiendi operis in civitate, munus publicum est, a quo quinque liberorum incolunium pater excusetur. l. 4. ff. de mun. et hon.

Si quis decurio pater sit duodecim liberorum, honoratissima munera quere doctur. l. 24. C. de decur. et fil. eor.

Demonstratur vane nec abscessisse, numerum liberorum ad excusationem municipalium munerum prodesse, ex rescriptis divi Elvii Perinacis. Namque Sylvio Candido in hæc verba rescriptum: *Εἰ μὴ πατρὶν ἀριθμὸν ἀφίστημι, πότε παύσεις ὁ τῶν τέκνων ἀριθμὸς ἀλλ' οὐκ ἐπὶ τῇ ἐκκατάστασι πατρὸς ἔχον δια τὴν ἐκκλησίαν ἐκκαλεῖσθαι, καὶ ἔστιν ἡ ἀλογία ὅτι συσχεῖται ἀριθμὸς τῆς παιδείας, καὶ ἀντιτάται τῶν ἀριθμῶν; id est, Etsi non ab omnibus muneribus dimittit patrem natorum numerus: quia sedatum pueros habere te per libellum notificasti, non*

Children, we reckon only those who are living at the time of alledging the Excuse; and those who are born after the Admission into the Office do not serve as an Excuse.

*est irrationabile, ut concedamus filiorum educatione remitti sibi munera, l. 5. §. 2. ff. de jure mun.*

It is none of our Business here, to reconcile these different Texts about the number of Children necessary for procuring an Exemption from Municipal Offices; it would seem by this last Text that it was arbitrary to judge of it according to the Circumstances, since it is said there that the Number of Children does not excuse indifferently and absolutely from Municipal Offices; and Equity would seem to require that it should be so, seeing there are Persons to whom a small number of Children is very burdensome, and there are others to whom a much greater number is not inconvenient. But since there are Usages of Places which have differently regulated the number of Children necessary for this Exemption, we have touched the Article in Terms which may agree, both to the Rule of Equity we have just now taken notice of in this last Text, and to the several Usages of Places, which in all probability have been a Consequence of the Diversity of those other Texts.

Qui ad munera vocantur, vivorum se liberorum numerum habere tempore, quo propter eos excusari desiderant, probare debent. Numerus enim liberorum postea impletus antea muneribus non liberat. l. 2. §. 3. ff. de vacat. mun.

Hoc circa variationes dicendum est: ut si ante quis ad munera municipalia vocatus sit quam negotiari inciperet, vel antequam in collegium adsumeretur, quod immunitatem pariat, vel antequam septuagenarius fieret, vel antequam publice proficeretur, vel antequam liberos susceperet, compellatur ad honorem gerendum. l. 5. §. 9. ff. de jure mun.

Ad excusationem munerum defunctus filius non profit, præterquam in bello amissus. l. ult. eod.

Sed si in bello amissi sunt quæsum est an prosint? & constat eos solos prodesse qui in acie amittuntur. Hi enim qui pro Republica ceciderunt, in perpetuum per gloriam vivere intelliguntur. Inst. de excus. tut.

Altho this last Text relates only to the Exemption from a Tutorship, yet it may be applied to this Case, and would have its Equity therein, altho it seems not to suit with our Usage.

## XV.

15. The Grand-Children represent their Fathers, to serve as an Excuse.

If there were only Grand-Children in the room of one or more Children already deceased, the number would be supplied by the said Grand-Children, those of every Son coming into the place of their Father &c.

Nepotes loco patrum succedentes vice eorum prodesse consueverunt, ideoque, si quinque numerum liberorum ex avulorum filiorum nepotibus suppletur, a muneribus personalibus in quem patrum tuum esse dicis, jure continetur excusatur. l. 3. §. de his qui num. lib.

Quotcumque autem nepotes fuerint ex uno filio pro uno sibi numerantur. l. 2. §. 7. ff. de excus.

## XVI.

Those who are in actual Service in the Army are likewise exempt from Municipal Offices, and they are dispensed with from serving in them in consideration of that other Service they render to the Publick, and from which they would be diverted by serving in the Municipal Offices b: But he who to avoid a Municipal Office which he has been nominated to, should engage himself in the Service of the War, would not on that score be discharged from the said Office c.

b His qui castris operam dant, nullum municipale munus injungi potest. l. 3. §. 1. ff. de muner. et honor.

c Qui obnoxius muneribus sue civitatis fuit, nomen militæ detugendi oneris municipalis ratio leddi, deteriore causam reipublicæ facere non potuit. l. 4. §. ult. ff. de mun. et honor.

## XVII.

We may reckon in the number of Excuses for declining a Municipal Office that of Poverty, if it be such as to render the Person incapable of serving in it d; for on the part of him who is in this condition, it would be just not to lay a Burden on him which he was not able to bear: and besides, it would be for the Interest of the Corporation to put this Administration into surer hands, especially if it were an Office which any way concerned the Receipt and Disbursement of Money; in which case if there should happen any Loss of the publick Money by the Insolvency of the Person appointed to receive it, this Loss would fall on the Corporation which had named him e.

d Quod si quis propter censum tenuiorem, vacationem inquerit, atque hoc probaverit, beneficio potitur; si propter rationem angustias ad personalia vocatur obsequia. l. ult. c. de his qui num. lib.

Paupertas sane dat excusationem, si quis imparem se oneri injuncto possit probare, idque divorum scriptis rescripto conueniatur. l. 7. ff. de excusar.

Cum facultates suas omnes in filium tuum contrulisset, nec quicquam habere proponas: respectu patrimonii ejus quod tuum desit, muneribus civilibus non adstringeris. l. 4. §. de his qui num. lib.

Paupertas, quæ operi & oneri uicem impar est, solet tribuere vacationem. l. 40. ff. eod.

Altho this last Text concerns only Tutorships, yet it may be applied for the same Reasons to the Rule explained in this Article.

e Juxta veteris leges nominatores susceptorum & eorum quod præpositurum horreorum & pagorum creantur, etiam si anteant, si minus idonei sint qui ob eorum suavitatem nominantur. l. 9. de suscept. pios. et arbor.

We have not set down in this Article, that the Loss would fall upon the Persons who nominated, but

but that it would fall upon the Corporation which had made the Nomination; because it is the Corporation that is answerable for the publick Money, and for those who collect and receive it, and that the Persons who compose the Assembly in which the Nominations are made, represent the Corporation, and are accountable in their own Names only for what they may be charged with of fraudulent Dealing and Male-Administration: and this is the Usage in France; whereas by the Roman Law, the Persons who made the Nomination, were answerable for the Conduct of those whom they named.

Exactores vel susceptores in celeberrimo cœtu curiæ consensu & iudicio omnium sub actorum testificatione firmantur: provinciarumque rectores eorum nomina, qui ad publicum munus officii editi atque obligati fuerint, immutescant, & animadvertant quicumque nominaverint, ad discrimen suum universa quæ illi gesserint, redundare. l. 8. C. eod.

And there were even some Offices, in which the Persons who were in actual possession of the Office named their Successors, and were answerable for them.

In eum, qui successorem suo periculo nominavit, si finito magistratu successor idoneus sit, actionem dari non oportet. l. 15. §. 1. ff. ad municip.

V. T. C. de petiti. nom.

#### XVIII.

18. Other grounds of Excuse according to Equity.

If besides the Grounds of Excuse we have just now explained, there should be any other just Cause for discharging him who should be nominated to a Municipal Office, it would be equitable to have regard to it; as if some extraordinary Event had occasioned him a great Loss, intangled him in some great Affair, or put him out of a Condition of being able to exercise such Office: for in these Cases Equity and Humanity ought to supply the want of written Rules, and indeed it is the primary and fundamental Rule in this matter, that as it is upon Equity that all the grounds of Excuses which the Laws receive are founded, so the same Equity requires that we should admit those grounds of Excuse which particular Circumstances may render just, altho the Laws have not foreseen them.

f Omnis excusatio sua equitate nititur. l. 1. ff. de vacat. & excus. mun.

See the following Article, and the Remark upon it.

#### XIX.

19. Two imperfect Excuses do not suffice to make a perfect one.

Seeing old Age excuses only those who have attained seventy Years; and that Children excuse only when they are of the Number regulated by the Laws, it would not be sufficient that he who should desire to be dispensed with from serving in a Municipal Office were sixty five Years of Age and had three Children; for each of these Excuses not being sufficient separately,

what is wanting to them when divided, is not supplied by the joining of two imperfect Excuses together g.

g Quamvis sexaginta quinque annorum aliquis sit, & tres liberos incolumes habeat, a muneribus tamen civilibus propter has causas non liberatur. l. 1. §. ult. ff. de vacat. & excus. mun.

If he who has sixty five Years of Age together with three Children, were moreover afflicted with some Disease, had a great deal of Business, and but a small Estate, or that he laboured under other inconveniences, none of which alone would be sufficient to discharge him, but which being all of them joined together would be as great an Obstacle as any single Excuse that is allowed to be sufficient; it would be just to discharge him by the Rule explained in the preceding Article.

#### XX.

Since the Municipal Offices ought to be born by the Inhabitants every one in their turn successively, those who have once served in one of the said Offices in the places where there is a sufficient number of Inhabitants, cannot be named again for the same Office h: but in the places where the small number of Inhabitants should make it necessary to name the same Persons more than once to the same Offices, it might be done by observing the Rule that is explained in the following Article i.

h Civilia munera per ordinem pro modo fortunarum sustinenda sunt. l. 1. C. de mun. patrim.

Præses provinciarum provideat munera & honores in civitatibus æqualiter per ætates secundum ætates & dignitates, ut gradus munerum honorumque, qui antiquitus statuti sunt, injungi: ne sine discrimine & frequenter iisdem oppressis, simul vires & viribus respublicæ destituantur. l. 3. §. 15. ff. de muner. & hon.

Quis tam inveni iniquus arbitrer rerum potest, qui in urbibus magnifico statu præditis ac nova curialium numerositate locupletibus, ad iterationem quæpiam transacti oneris compellat: ut cum ali necdum pene initiati curiæ sacris fuerint, alios & continuo & repetente sæpe functiones afficiant. l. 52. C. de decur.

i Defensionem respublicæ amplius quam semel suscipere nempe cogitur, nisi id fieri necessitas postulat. l. 16. §. ult. ff. de muner. & honor.

Cum se omnibus muneribus functum esse adfereres, ad eadem munera, si aliorum civium copia est qui obsequiis civilibus fungi possunt, præses Provincie devocari se non permitet. l. 3. C. quem adm. civ. mun. indit.

#### XXI.

One cannot oblige the same Persons to exercise the same Offices but after an interval of five Years; and if those who have served in one Office, should be called to another different Office, an interval of three Years would be necessary; which ought to be understood as well of Offices which have some Honour

21. He who has served in an Office, cannot be named to the same, nor to another Office, except after a cer

*21. In inter-  
val of  
time.* Honour or some Dignity annexed to them, as of those which are only burdensome *l.*

*l.* Ab honoribus ad honores eisdem quinquennii datur vacatio, triennii vero ad alios. *l. 2. C. de muner. & honor. non contin.*

Navicularii, & mercatores olearii, qui magnam partem patrimonii ei rei contulerunt, intra quinquennium muneris publici vacationem habent. *l. 5. ff. de mun. & honor.*

## XXII.

*22. The  
Interval is  
voluntary  
for Offices  
that, are  
burden-  
some, but  
not for  
Dignities.*

The Intervals spoken of in the preceding Article, are granted for burdensome Offices to those who being called to them against their Will would avoid them, and it is free for them to renounce the benefit of the said Intervals, but as for the Offices which have only Dignity and Honour without any Burden, the Interval ought to be observed without regard to the Consent of him who is called to the Office *m.*

*m.* Divus Severus rescriptit, intervalla temporum in continuandis oneribus invitis, non etiam volentibus concessa, dum ne quis continuat honorem. *l. 18. ff. ad municip.*

Gerendum honorum non promiscua facultas est, sed ordo certus huic rei adhibitus est. Nam neque pius majorem magistratum quisquam, nisi minorem suscepit, gerere potest: neque ab omni aetate, neque continuare quisque honores potest. *l. 14. S. 5. ff. de muner. & honor.*

## XXIII.

*23. The  
same Of-  
fice is not  
continued  
from Fa-  
ther to Son,  
nor from  
Son to Fa-  
ther.*

Those Intervals are observed with respect to the Father, and to the Son living under the Father's Authority and Jurisdiction; for they being considered as one and the same Person, the Service of the one in an Office frees the other from it during the said Intervals; and the same Office cannot be continued from the one to the other, nor can they be called one after another, either to the same Offices, or to others of a different nature, without observing the delays of those Intervals *n.*

*n.* Honores & munera cum patre & filio decuriones sunt, in eadem domo continuari non oportet. *l. 1. C. de muneribus honor. non contin.*

## XXIV.

*24. It is  
not the  
same thing  
between  
Brothers,  
altho they  
have their  
Goods in  
common.*

The Rule explained in the preceding Article, is limited to the Persons of the Father and Son, and does not extend to Brothers who may have their Estates in common together, for every one of them would have his separate Right therein, and they would be two Heads of Families; so that each of them would have no other Interval besides that which should be on account of the Offices in which he himself

had served, and the Service of the one would be of no use to the other *o.*

*o.* Intervalla temporum quæ in unius persona locum habent, fratribus (licet communia possideant bona) minime prodesse frequenter constitutum est. *l. ult. C. de muner. & honor. non contin.*

Lucet indivisa bona fratres habent, nihilominus tamen singuli suo nomine civilibus tenentur muneribus. *l. 7. C. de decur.*

## XXV.

Seeing Municipal Offices can be exercised only by the Inhabitants of the Places *p*; those who have transferred their Domicil from one Place to another, cannot be called to the Offices of the Place from which they have removed; but this Exemption takes place only in the Case of those who have transferred their Domicil before they are nominated to an Office in the Place from whence they remove, and not in the Case of those who being named to an Office in the Place of their Domicil, would for that Reason change it *q.*

*p.* Ejus patriæ oneribus respondere debes, cui te attributum esse commemoras. *l. 1. C. quemadmodum civ. mun. indic.*

See the 5th Article.

*q.* Incola iam muneribus publicis destinatus nisi perfecto munere incolam renuntiare non potest. *l. 34. ff. ad municip.*

There are Regulations and Usages of Places as to the time and manner of the Translation of the Domicil, both with respect to the Nomination to Municipal Offices, and to Assessments for Personal Estates, and especially when any one transfers his Domicil from a Place that is subject to the Tax to a Place that is exempt from it.

See the 7th Article of the 3d Section, and the Remark that is there made upon it.

## XXVI.

Besides the Causes that have been just now explained, which exclude or excuse from Municipal Offices, there are other Causes which render Persons unworthy of them. Thus they who have been judicially condemned to some Punishment for some Crime or Offence, cannot be called to these sorts of Offices, especially to such as have some Dignity annexed to them *r.* But this incapacity or unworthiness ought to be Personal, and the Son whose Father had incurred the said incapacity because of some Crime which he had been convicted of, could not for this Reason be excluded from serving in these sorts of Offices, and even in such as have some Dignity annexed to them *s.*

*r.* Qui ad tempus relegatus est, si decurio sit, definit esse decurio. *l. 21. ff. de decur.*

*s.* Nullum patris delictum innocenti filio perno-  
Ideoque nec ordine decurionum, aut ceteris honoribus

honoribus propter ejusmodi causam prohibetur. l. 2. §. 7. ff. de decur.

Crimen vel poena paterna nullam maculam filio infligere potest, namque unusquisque ex suo admisso fori subicitur: nec alieni criminis successor constituitur. l. 26. ff. de poenis.

Sancimus ibi esse poenam ubi & noxia est. Propter quos, notos, familiares procul a calumnia submovemus, quos reos sceleris societas non facit. Nec enim adfinitas vel amicitia nefarium crimen admittunt. Peccata igitur suos teneant auctores, nec ulterius progrediantur metus, quam reperiatur delictum. l. 22. C. de poenis.

Quod pater in reatu criminis alicujus est, filius impedimento ad honores esse non debet. l. 3. §. 9. ff. de mun. & honor.

## XXVII.

27. The scarcity of inhabitants makes the times at which the elections are to be made.

All the Excuses, and all the Intervals have their effect in Places where there is a sufficient number of Inhabitants to fill the Offices: but if the scarcity of Inhabitants should make it necessary to name the same Persons again without observing the usual Intervals of time, or to name those who have a lawful Excuse; it is equitable, according to the Circumstances, to dispense in that Case with the said Rules; observing nevertheless an equitable Temperament in granting always some ease to those whose Excuses are most favourable, and who ought to be least burdened.

Si alii non sint qui honores gerant, eosdem compellendos qui gesserint, compluribus constitutionibus cavetur. Divus etiam Hadrianus de iterandis muneribus rescriptit in hæc verba: Illud consensio, ut si alii non erunt idonei qui hoc munere fungantur ex his qui jam functi sunt, creentur. l. 14. §. ult. ff. de mun. & honor.

## XXVIII.

28. Offices that are burdensome cannot be imposed on those who have already others, even altho those other Offices in which they actually serve, should oblige them only to the performance of some Function which were only Honorary without any Burden. But an Office of Dignity may be conferred on him who serves in an Office that is burdensome.

Offices that are burdensome cannot be imposed on those who have already others, even altho those other Offices in which they actually serve, should oblige them only to the performance of some Function which were only Honorary without any Burden. But an Office of Dignity may be conferred on him who serves in an Office that is burdensome.

Honorem sustinenti munus imponi non potest: minus sustinenti honor deferri potest. l. 10. ff. de mun. & honor.

## XXIX.

29. Persons are called to the highest Offices by degrees.

The natural Order of calling Persons to Offices which have some Dignity annexed to them, is to observe the degrees of their Differences, and to call to the highest Offices only those who have first served in the lowest, unless there be some just Cause for varying from this Order.

Ut gradatim honores deferantur; Eandem, & ut a minoribus ad majores, perveniant Epistola Divi

Pii ad Titianum exprimitur. l. 1. §. 1. ff. de mun. & honor.

Gerendum honorum non promiscua facultas est, sed ordo certus huic rei adhibitus est: nam neque prius majorem magistratum quisquam, nisi minorem susceperit, gerere potest. l. 14. §. penult. cod.

Altho this Rule be equitable, yet it is not always strictly observed; for there may be just Reasons why this Order should not always be followed.

## XXX.

Since after the Nomination to Municipal Offices, the Persons who have been named may be discharged, if they have just Reasons to offer why they should be discharged; and that before a second Nomination be made, the time for which the Officers who are in actual Service were elected may expire, and the Functions of the said Offices come to cease; it is therefore for the Interest of the Publick, that in order to prevent this Inconvenience, the Nomination should be made some time before the Persons who are named are to enter upon the Exercise of their Offices; and that their Nomination be intimated to them, that there may be a time sufficient to examine the validity of their Excuses, if they alledge any, and to name other Persons, in case upon their Appeal from their Nomination they should be discharged.

30. The Nomination to Offices ought to be made some time before the Persons nominated are to enter to the exercise of them.

Decuriones ad magistratum vel exactionem annorum ante tres menses vel amplius nominari debent. Ut si quaestiones eorum videantur iusta, sine impedimento, in absolvendi locum alius subrogetur. l. 1. C. de magistr. municip.

Observare oportebit magistratus, ut decurionibus solemniter in curiam convocatis, nominationem ad certa munera faciant, eamque statim in notitiam ejus qui fuerit nominatus, per officialem publicum perferré curent. Habuero appellandi, si voluerit, atque agendi facultatem apud præsidem causam suam jure consueto. Quem si constituerit nominari minime debuisset, sumptum litis eidem a nominatore restitui oportebit. l. 2. C. de decurion.

## XXXI.

If the Persons who have been named, having no lawful Excuse, should refuse to serve the Office, they would be constrained to do it by the Course of Justice, according to the Circumstances.

31. Persons named to Offices are compelled to serve in them, if they are not excused.

Si quis magistratus in municipio creatus munere instructo: longi detrectet, per præfides munus agnoscere cogendus est remediis quibus auctoritas que solent cogi ad munus quod instructum est, agnoscendum. l. 9. §. ff. de mun. & honor.

Si ad magistratum nominatus inoffensus, requiratur. Et si potius (eos) animo licere patuerit, his ipsorum poena perimitur, qui præfidi tempore in locum eorum ad administrandis munera vocabantur: ita ut si potius reperti fuerint, biennio in regis onera administratus cogantur agnoscere. Omnes enim qui officia publicorum munerum tentaverint



verint declinare, simili conditione teneri oportet.  
l. 18. C. de decur.

## XXXII.

32. He  
who does  
not insist  
on his Ex-  
emption,  
does not  
lose his  
right in  
another  
case.

If he who having an Exemption might have got himself discharged from a Municipal Office, did accept of it, whether it were with a View to serve his Country, or for some other Cause, he would not by that have lost his Exemption: and if he were called to another Office, he might insist on his Privilege a.

a Qui publici muneris vacationem habet, si alium quem honorem, excepto decurionatu, sponte suscepit, ob id quod patrie suae utilitatibus cesserit, vel gloriæ cupiditate paulisper jus publicum relaxaverit, competens privilegium non amittit. l. 2. C. de iis qui sponte mun. suscep.

V. l. 2. ff. de jur. immun.

## XXXIII.

33. The  
Office does  
not go to  
the Heir of  
him who  
dies before  
he enters  
upon the  
exercise of  
it.

If he who was called to a Municipal Office happens to die before he entered on the exercise of it, he transmits no Engagement on that score to his Heirs; for the Engagement to the Functions of the Office was personal b.

b Si ante diem subeundi honoris atque muneris pater tuus defunctus est, conveniri eo nomine heredes ejus non oportere Praeses Provinciae minime ambiget. l. 1. C. si post creat. quis decess.

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## T I T. XVII.

Of Universities, Colleges and Academies, and of the Use of Sciences and Liberal Arts, with respect to the Publick.

**T**H E erecting of Universities has been a Consequence of the Necessity of the several Sciences that are there taught; and this Necessity of Sciences in a State, is a Consequence of the Order of the Society of Mankind, which requires the Use of them for the Publick Good: So that to judge of the End that has been proposed by the erecting of Universities, of Colleges, of Academies, and of the Advantage that is to be reaped from them, it is necessary to consider in those Sciences, the relation which they may have to the Order of Society, and to the Publick Good.

All the Sciences have in the first place this Usefulness in general, that they convey to the Mind of Man the

Knowledge of Truths of several Natures, which adds to the natural Lights of Reason, a Facility and a Habit of judging better of all Things than it is possible for Persons to do who have only the bare use of Reason without that Knowledge, and to reason and explain their Thoughts concerning them in a better Order, with greater Clearness, greater Exactness, greater Steadiness, and greater Politeness: and altho this Advantage of being versed in the Sciences be not always such in all Persons as that every one attains by his Study this soundness of Reason, which the Principles and the detail of Truths which are contained in the Sciences ought naturally to produce; yet the Study of the Sciences has nevertheless its usefulness by the good Use that many People make of it: and if it often happens that because the Liberty of Study is free and open to all sorts of Persons without distinction, and that there are many whose Genius is of so narrow Bounds, and so little Penetration, of so little Exactness, and of so little Judgment, that they acquire by their Study only an imperfect confused Knowledge of Things, and mixed with false Ideas, and in whom instead of Light and Order, which ought to be the fruit of Study, we see on the contrary only Darkness and Confusion; yet this inconvenience does not take away the Necessity and the Usefulness of teaching the Sciences

But besides this general Advantage which we have just now remarked, the Sciences have other Advantages of much greater Importance, and more essential to the Publick Order, whether it be in what relates to Religion, or in what concerns the Temporal Affairs; and both the one and the other of these two Matters demand the Use of several Sciences. So that it is of infinite Consequence to the Publick, that the Sciences which relate to Religion be preserved in their Purity, with all the Precautions that are possible for maintaining in all Places, and to future Ages, the true and uncorrupted Knowledge of their Principles and of their Detail: and it is likewise of a very great Importance to cultivate, as much as is possible, the other Sciences which concern the Temporal Affairs; and the rather because they are all of them of some Use in Religion, as will appear hereafter.

As to the Sciences, the Use whereof tends directly to the Service of Religion, seeing they consist in disposing Men to the Worship of God, and to the Observance of the Law which he has given them: The first Science which Religion demands, is that which ought to teach us the Worship of God; and the second is that which teaches us the Divine Law.

The Science of the Worship of God implies the Knowledge we ought to have of the God to whom we owe this Worship; and it implies likewise the Manner in which it is his Pleasure that this Worship should be paid him: And the Science of the Precepts of his Law comprehends the Knowledge of the Letter of those Precepts, and that of the Spirit which ought to animate the Works thereof.

The Knowledge of God cannot be acquired by any of the Senses in the manner that sensible Objects are known; for his Nature is of an Order that is infinitely above their Capacity, and beyond their reach. It is true, the Knowledge of sensible Objects may lead Man to discover in them the Workmanship of an infinite Artificer, the Author of so many Wonders; and it does not seem even to be possible to open the Eyes, and to see and consider the Universe, enlightened with the Light of the Sun, the Heavens, the Stars, the regular Order of the Days, the Nights, the Months and the Years, the vast extent of the Earth, and of the Seas that environ it, the multitude and infinite variety of Plants, Trees, Minerals and Animals; and, lastly, Man, composed of a Body of a divine Structure, animated with an intellectual Faculty, without being at the same time raised into the highest Admiration of those great Works, the least of which by its bare Existence proves a Cause which produces it, and every one of which by its Structure proves alone the infinite Power and Wisdom of that Cause, which is still more clearly and evidently proved by the Disposition of that innumerable multitude of Beings of all kinds in so great order. But this Proof, how natural and how certain soever it appears, has never led any Person to the true Knowledge which Man ought to have of God, and to the true Worship which he ought to render him; and it does not even make the least Impression on the Minds of many Persons, since we have seen some that have

not believed in a Deity; so that this natural Ignorance in which Men are born of Religion, and of the Worship which they owe to their Creator, and the contrary Bent which carries them to what he forbids by his Law, is an undeniable Proof, that Man is fallen into a State, which could not be natural to a Creature capable of knowing and loving his God, if he had continued such as he came out of the hands of his Creator. This Truth, which is sufficiently proved by this Ignorance, and this Propensity to Evil, is still more confirmed by the infinite multitude of Miseries which are the Consequences thereof.

Since therefore it is true, that the Knowledge of God, and of the Worship which we owe him, cannot be acquired either by the Senses or by Reason, without other Helps; it is by some other way that we are to be led to it: and the only way is that which God has made use of for that purpose, he having been willing to teach us himself what he thought proper for us to know of his Nature, and the Manner in which it is his Pleasure we should serve him; and this way is so different from the manner of knowing God in his Creatures by the use of the Senses and of Reason, that he has counted this way for nothing. For besides that this way would furnish even to the most discerning Persons only Proofs to convince them that there is a God, but which would not lead them to the Knowledge of his Nature, nor of the Duties he requires from a reasonable Creature; it is not only to the Wise and the Learned that God is willing to manifest himself, he communicates himself to all sorts of Persons, without any regard to their Capacity or Incapacity, and to all the other natural Qualities. And this is what he has done by the great train of Miracles and Prodigies with which he has accompanied the Knowledge he has been pleased to give to Men of the Mysteries and Truths of the Religion in which he desires to be served, and where he teaches Men the sublime Science which discovers to us the Cause of our Fall, of our Ignorance, of our Inclination to Evil, and of all the Miseries which are the Consequences thereof, and the Remedies which he has made use of, to draw us out of them, and to bring us back to know him and to serve him. But as for this manner of knowing him naturally in his Creatures,

he has taught us by the Ministers, who are the Dispensers of the Knowledge of the Truths and Mysteries of Religion, that it has served only to those who have had some Knowledge of the Deity by the Creatures, to make them guilty of making a bad use of the said Knowledge, and of Ingratitude towards him whom they have by the help of the said Knowledge discovered to be the Creator and Author of all things; they not having paid him the Honour and Worship which they owed him, and having on the contrary put into his place Creatures whom they have adored *a*.

It is therefore only by the Truths which God himself has been pleased to teach unto Men, that they are able to know him, and to serve him in the Religion which he has established; and consequently it is the Science of that Religion which is the first of all the Sciences, and which is infinitely above all the others. And it was likewise principally on account of this first Science, that Universities have been founded, in order to preserve the same, and to teach it in its Purity.

This Science of Religion comprehends three Parts: The First is of the Mysteries and of the Truths of the Faith which God has revealed to his Church; as that which concerns his divine Nature, the Distinction of the three Persons in one God, their Attributes, the Creation of Angels, the Fall of one part of them, the Creation of Man, his Fall into the Bondage of Satan and of Sin, his Redemption by the Mystery of the Incarnation, the Sacraments, the Unity of the Church, the Extent thereof unto all Nations, its Perpetuity, the Mission of the Apostles, and of their Successors the Pastors and Ministers of the Church, their Functions for the said Ministry, and the other Truths of the like nature.

The second part of this Science is the Doctrine of Manners, which is composed of the Precepts of the Divine Law that were taught unto Men under the first Covenant by the Ministry of Moses, and under the second by Jesus Christ, who instead of the Letter of this Law, which the first Covenant gave only, has taught the Spirit, and given the Accomplishment of it by his Gospel.

*a Because that when they knew God, they glorified him not as God, neither were thankful, but became vain in their Imaginations, and their foolish Heart was darken'd. Rom. 1. 21.*

See the end of the *Wisdom* of Solomon, ch. 13.

The third is the Ecclesiastical Discipline, which is as it were the Policy of the Church for all things which are not essential, either to Faith or to Manners; such as the Ceremonies of the Divine Worship, those of the Administration of the Sacraments, the Manners of assembling Councils, and of holding them, the Ways of filling Bishopricks, Cures, and other Benefices, the Establishment of Chapters, and the other Matters of the like nature, of which some Rules may be different in divers Places, and subject to Changes.

It was in order to preserve in the Church the Rules of this Science of Religion in these three Parts, of Faith, Manners and Discipline, that after the first Mission of the Apostles they and their Successors held Councils as there was occasion, to purge the Church of Abuses, of Errors, and of Heresies *b*; and the Popes made likewise many Decrees and Constitutions. So that the infinite multitude of Heresies, of Errors and Abuses which have sprung up in all Ages and in divers Places, having made it necessary to have a great number of Decisions and Rules, in order to preserve the Purity of the Faith and of Manners, and to maintain the good Order of Discipline, the said Decisions and Rules have furnished matter for composing a Science, the Importance and Extent of which has made it necessary to have the Assistance of able Persons who are thoroughly versed in the said Rules in their Purity, and who may be faithful in teaching and expounding them to others.

It was for this purpose, that besides the antient Councils, in the first Ages of Christianity, God gave to his Church holy Men to be Doctors and Teachers, who have merited the Name of its Fathers by their Doctrine and Holiness of Life; and it is for the same end, that in all the Ages ever since God has presided over the several Councils which it has been necessary to assemble on account of the new Heresies, new Errors, and new Abuses that crept into the Church by degrees. So that all these things relating to the Church have furnished Matter for a Science which comprehends the Doctrine of Faith, and of Manners, and the Rule of Discipline; all which are deposited with the Church in the Books of the Holy Scripture, in the Councils, in the Writings of the

*b Acts 15.*

Fathers,

Fathers, and in the sacred Canons which are composed of the said Doctrines, gather'd from the Holy Scripture, from the Councils, from the Writings of the Fathers, and the Constitutions of the Popes. And it is for the Study of this Science that Universities have been established, the Professors of which are bound to have the Character of a publick Testimony of their Capacity, and a Title which gives them a Right to profess and to teach the Parts of this Science which are committed to them; such as are the Matters of that part which is called Theology or Divinity, the Interpretation of the Holy Scriptures, and the others which are differently distinguished according to the several Usages of Places.

Next unto this Science of Religion among all the others which are called Human Sciences, to distinguish them from this first, that which is most necessary and of greatest Importance in the Order of the Society of Mankind, and which likewise is of greatest Dignity, is the Science of the Laws, which regulate the Justice Men owe to one another in all the sorts of Affairs, which the Ties, the Engagements, and the other Consequences of their Society may produce; and this comprehends the Rules of the Administration of that Justice, and the Rules of the Functions and Duties of those who partake in the said Administration. It is these Laws which are called the Civil Law, and which consists chiefly of the Rules of Natural Equity, of which the Books of the *Roman Law* contain an ample Detail; concerning which the Reader may see what has been said on this Subject in the Preface to the *Civil Law in its Natural Order*, and in the Treatise of Laws which follows the said Preface. It is for the teaching of this Science that Professors of Civil Law are established in the Universities; and there being a great Affinity between the Canon and the Civil Law, both the one and the other being composed of Laws, and in such a manner as that many of the said Laws are common both to the one and to the other, the same Professors teach both.

Altho' these first Sciences of which we have just now spoken, regard in several respects the Advantage of the particular Persons who compose the Society, yet they have moreover a relation to the general Order of that Society, some of them for the spiritual

Affairs, and others for the temporal; and they contain many Rules which relate to the said Order, and which contribute to form and to maintain it. They teach also in the Universities other Sciences which have not the same relation to that general Order, and which do not contain any Rule whereof the Use has any direct tendency to the said Order. But seeing the said Sciences are useful to the particular Persons who study them, and that the common Good of the particular Persons who are Members of the Body of the Society, ought to be considered as a publick Good, it is for the Interest and general Order of the Society that the said Sciences be cultivated in it.

Of all these Sciences that which has the Object of the greatest Importance is Physick, invented for the greatest of all temporal Blessings, which is Health. It is by the Principles of this Science that Men endeavour to discover the Nature, the Causes, and the Remedies of the different sorts of Diseases: which implies the Necessity of knowing the Structure of the human Body, the Use of the several Parts which compose it, the Blood and the other Humours, in order to discover the divers Effects of Distempers on the Parts of the Body which are affected by them, and on the whole Body. This Science comprehends the Knowledge of the Remedies which Experience has discover'd by the Use of Plants, of Minerals, and of the other simple Remedies, and of those which are compounded; including also the Knowledge of the Diet that is suitable to the different Distempers; the Use of Surgery for an infinite number of different Operations according to the several sorts of Evils, and especially for Wounds, Fractures, Luxations or Dislocations, and other the like Evils. It is these two Parts of the Art of curing Diseases which are called Pharmacy and Surgery, which comprehend all sorts of Remedies and Helps for the preservation and restoration of Health, and of which the Science of Physick teaches the Principles, and regulates the Use; so that it has been necessary to establish in the Universities Professors of this Science.

None of the Sciences, of which we have just now given these general Ideas, can be acquired, neither ought any one to engage in the Study of them, till he has first acquired the Knowledge of other Matters preparatory to the Study of the said Sciences, and which

contain as it were the Principles and the Elements of them. And it is for this reason that the said Principles and Elements are taught in the Universities under the Name of Arts, to distinguish them from those first Sciences to which the said Rank is given because of their Dignity; altho some of the said Arts have always had, and still have, the Name of Sciences given them.

Those kinds of Arts called Liberal Arts, Grammar, the Knowledge of the Classick Authors, Rhetorick, Logick, Physick, Metaphysicks, are the Parts of Philosophy, which are and may justly be placed in the number of Sciences, since they consist in the Theory of many Principles and of many Truths, which have their Certainty, and the other Character of Sciences, altho there be joined with them, especially in Physick, things which have not that degree of Certainty.

All those several Arts have their Order with respect to one another, and they have all of them together their relation to those first Sciences which have been mentioned: Grammar hath its Use in teaching the Languages, and especially the antient ones, which are the Languages of the Authors of the Books in which is preserved the Deposit both of Sciences and of Arts; among which Languages the most necessary are the *Greek* and the *Latin*, which are the original Languages of those Authors, and which have these Advantages, that the *Greek* is the original Language of the Holy Scriptures, and of all the most antient Authors of Sciences; including under this Name that also of Liberal Arts; which is the reason that the greatest part of the Words of those Sciences are of the *Greek* Language. And as for the *Latin*, it is at this day the Language of the Church of *Rome*, and it has been also that of the greatest part of all sorts of good Authors; and we have likewise translated into this Language all the antient Books of the other Languages.

Besides this first Usefulness of Grammar in teaching the antient Languages, it has also that of containing the Elements and Principles of all the Languages. For it is by Grammar that we learn to distinguish in all Languages the several sorts of Words, the Use whereof is necessary for composing them; such as the Names of Persons and Things which are called Substantive Names, those which are termed

Adjectives which distinguish the Qualities, and every thing that diversifies both the Persons and the Things; the Verbs, which mark the Dispositions, the Actions, the Motions, and every thing that one would express relating to the Condition in which one considers all things animate or inanimate; and the rest which one learns by Grammar, which takes in the Elements and the Foundations of all manners of Expression, and the first Principles of the Art of Speaking, and of the Propriety of Speech. So that Grammar is of use in Languages, even in the vulgar Languages which every one speaks; since it is by the help of these Principles of Grammar that we dispose for use the Words and the Expressions: which is common to all the Languages in general.

Seeing the Precepts of Grammar are not sufficient for acquiring the Knowledge of all Books, we ought to join therewith the Study of such *Greek* and *Latin* Authors as have writ best in these two Languages, in order to obtain a Habit of understanding them well, and of explaining all sorts of Books; and because the Authors which are most proper to be read for getting a true Knowledge of the *Greek* and *Latin* Tongues, are almost all of them Pagans, who have writ in a manner altogether human, without any Knowledge of Religion, and on different sorts of Matters, but all of them within the Bounds of human Learning, the Study of the said Books is called the Study of human or classical Learning, which, besides the Agreeableness thereof, has also its Usefulness by the Politeness and Elegancy of the Style of those Authors, by many Sentences, witty Expressions, and other Ornaments and Matters of Learning which are very useful, whether it be in writing or speaking, or even in bare Conversation, and for other Uses. So that this Study of the human or classical Learning, and the reading of those Heathen Authors is allowed, as well because of the Necessity of learning from them the antient Languages, as because of the other Benefits which may be gathered from them: but Religion and good Manners require that we should not put into the hands of the Youth such Passages of the said Books as may lead them to Profaneness and Irreligion.

Since among those Authors that are read in the Study of the human or classical Learning, there are many of them

them which are Historians and Cosmographers, others that are Poets, some *Greek* and some *Latin*; we learn in the said Books the antient Histories, some Principles of Geometry and Cosmography, and also the Rules of the *Greek* and *Latin* Poetry: all which Studies have their Usefulness, which shall be explained hereafter.

After having studied Grammar and some of the classic Authors, the next Study is that of Rhetorick, which is likewise accompanied with the Study of the classic Authors; and there one learns the Elements and the Precepts of the Art of Eloquence; which consists in some Rules drawn from Remarks which have been made by some Authors on the natural ways of speaking agreeably and with efficacy so as to persuade, mixing sometimes in Discourse figurative Expressions of several sorts, according to the different Subjects, and the Use which the Discourse is designed to have, whether it be to set some Truth in its true Light, or to excite some Passion, or for other ends. But since all those Figures and all the other Ornaments of Discourse are useful only in so far as they are essential to the respective Subjects, and agreeable only in so far as they are natural, and that many of those who have studied this Rhetorick do not know how to adapt it to its proper Use, but search for Ornaments where none ought to be used, and do not give to those which may be necessary, the natural Air which ought to make their whole Beauty; the servile Use which they make of those Ornaments after having studied Rhetorick, and which they employ without distinguishing the Matters to which they are applicable, and the Manners of placing and turning them, has had this Effect, that the said Abuse, which is so common, hath brought into discredit the Name of Rhetorick, from whence those Figures and Ornaments are drawn. For whereas the Art of speaking well ought to raise the Mind to a solid and judicious Eloquence, suited to the several Subjects, and of which the Ornaments should have all their Grace and all their Beauty placed in the lively and natural ways of enlightning, of touching, of moving the Mind and the Heart; the bad use of the Figures and other Ornaments of Rhetorick, deviating from the natural Turns of Expression, and substituting in their Place that affected Air of perverting the Rules, produces an Ef-

fect wholly contrary to Eloquence, which ought to draw all its Beauty from Nature it self. And altho it be true that by Nature, without any use of Art, one cannot speak so well as by the help of Art, yet this Help ought not to appear, and the Art consists in hiding it, and in displaying only the natural Graces in the same manner as if Nature herself, were she in her Perfection, would display them; for it is she that is the Source of them. Thus the more that Art is concerned in giving to Nature its Perfection, the less it ought to appear; and the more there appears any thing of a servile Study and Labour of Art, the less it appears beautiful, according as Nature appears to have the less Share in it.

We make here this Remark on the Abuse which may be made of Rhetorick, because it is for the publick Interest that those whose Professions demand the Use of Eloquence, should abstain from that false Rhetorick, and make use of an Eloquence suited to their Subjects; and that they should retain with the Grace of the Ornaments which the Matters may demand, that Force and that Dignity that are proper for their Ends, whether it be for speaking in publick, or for composing Works which deserve to be writ in an elegant Style. For the publick Order renders it necessary to the Ministerial Function of several Professions, every one of which has occasion for its Eloquence to touch the Mind or the Heart. Some stand in need of it for setting Truths, whether they be Facts or others, in their proper light, and establishing the Proofs of them by the Strength of Reason, and by Reflections on every thing that may contribute towards it, and by a methodical Order, and the other Characters proper to this kind of persuading, and enlightning the Mind with the Light of Truth. Others have occasion for it, to excite the Passions or Sentiments of Esteem, Aversion, Tenderness, Indignation, Zeal, Generosity, and the other Sentiments which the several Subjects and Occasions may demand, according to the different sorts of Impressions which the different Characters of the several Objects ought to make; whether it be by their Charms, as Justice, Virtue, Truth; or by their opposite Qualities, as Injustice, Error, Vice. Thus, the Presidents or Chiefs of a Court of Justice have occasion to speak



in publick, to make Remonstrances or Harangues of another nature, either in favour of some useful Establishment, or for the Reformation of some Abuses; and their Dignity, and the Matters about which they are to speak demand an Eloquence that is grave and worthy of their Rank. Thus the King's Council in the said Courts of Justice have occasion to make Harangues, Remonstrances, and other Discourses of different kinds, which have their different Characters, and which require an Eloquence suitable to their Function: and altho their Pleadings on those Occasions may seem to be of the same kind with those of the Council for the Parties, having for their Subject the Defence of Justice and of Equity in behalf of the Parties who have the good Cause; yet they ought to be distinguished from those of the Council for the Parties by the manner of the Defence. For whereas the Advocates for the contending Parties having only the Interest of one of the Parties to defend, they may restrain themselves to what concerns the Interest for which they are of Counsel, and aim only at touching the Minds and Hearts of the Judges with the Sentiments and Passions which the Quality of their Causes may render necessary; so that the Exaggerations, and the other Figures of Expression adapted to the State of the Causes, may in their Mouths be natural to the Eloquence of their Profession: whereas the Duty of defending Justice being joined in the Mouth of the King's Council to the Dignity and Authority of their Offices, whose Functions are to bear Testimony to the Truth of the Facts, and to protect the Party who has Justice on his side, they ought to weigh the Interests and the Arguments on both sides, and to defend the just Cause in such a manner as to embrace only the Cause of Truth and of Justice; which banishes from their Eloquence the Figures and Ornaments which might give occasion to People to suspect they favoured the Interest of one Party more than the other, upon some other Consideration besides that of Equity which demands their Protection, and in defence of which alone they ought to employ the Force and Dignity of their Eloquence, which is consecrated to Truth and to Justice.

We may likewise place in the number of the Persons whose Professions or Employments may require the Use of Eloquence, those who preside in Assemblies,

whether Ecclesiastical or Secular, Ambassadors, Generals of Armies, and others who may have occasions of speaking in publick; and every one of the said Professions or Employments hath its peculiar manner of Eloquence. But of all the sorts of Eloquence, there is none of so great Importance to the Publick as that of the Persons whose Business it is to preach the Word of God to the People, Bishops, Pastors, and others who have the honour to be called to this Function; the Ministry whereof demands a sort of Eloquence proportioned to it by singular Characters, and such as may distinguish it from all other sorts of Eloquence, according as its End and its Use is different from theirs. For whereas all the other Uses of Eloquence are to persuade the Mind of some Truths, or to stir up in the Heart some Sentiments which may naturally become agreeable both to the Mind and to the Heart of the Persons whom we are desirous to move and to persuade, whether it be that they have no Interest at all of their own in the Matter, or whether their Interest be any way concerned; the Use of the Eloquence which ought to accompany the Word of God, is to enlighten the Mind with Truths, and to touch the Hearts with Sentiments and Motions, which tho essential to their greatest Interest, yet being far from being naturally agreeable to them, meet with nothing in the greatest part of Mankind but Opposition, and a Resistance which God alone can vanquish. The Persons to whom the Word of God is to be preached, are blind Men whose Eyes are to be open'd, deaf Men who must be made to hear, Persons afflicted with the Palsy who are to be put in motion, Lovers of their Pleasures, of their Interests, and Slaves to their Passions, who are to be taught and persuaded to abandon what they love, and to set their Affections on Objects which they despise, and whose Charms must render insipid and even horrible to them all the Objects of their Passions. So that this Work, which is next to a Miracle, cannot be effected but by virtue of an Eloquence which has the divine Character of the Truths which it teaches, and of the Sentiments which it ought to produce; and this Character is nothing else but the Light which shows those Truths in their true Colours, in order to persuade the Mind of them, and the Charm which inspires the Love of them into the Heart.

It is easy to judge that an Eloquence destined to such an use, ought to have for its primary Rule, that it be the Spirit of God which rules and actuates every thing that goes towards the forming of it: and altho God permits that the Ministers of his Word who preach it with another Spirit do nevertheless instruct and move some of their Hearers, either because of the good Dispositions of those who go to hear them, or by the Effect of a particular Providence of God over them; yet it remains always true, that he who preaches the Word of God being bound to endeavour to elevate the Minds of his Hearers towards God, ought to have for his Principle that Spirit of God which ought to animate his Spirit, and to pass from his Mouth and from his Heart to the Ears and to the Hearts of his Hearers.

According to this Principle, which we may suppose to be well established, and of which we need not bring here any more ample Proofs, every thing which those who preach the Word of God mix of their own that does not agree with the Spirit of God, cannot be proper for their Eloquence; and it will have on the contrary its Perfection by having the Characters of the Divine Spirit, since it is God that is to speak by their Mouth. Thus the Scriptures being God's own proper Language, it is chiefly from that Fountain that the Preachers of the Word of God ought to draw the Foundations and the Ornaments of their Eloquence; neither can they propose to themselves for a Pattern any Eloquence which comes up to that of the Holy Scriptures, not only in their own kind, but even in any other. So that it is somewhat strange that some pious Authors have been of opinion, that we ought not to search for Eloquence in the Scriptures, having been persuaded that their Character of Simplicity is quite opposite to it; whereas the Heathenish Authors themselves have discovered in this Simplicity of the Scriptures, Beauties and Nobleness of Expression which they have given as an Example of that kind of Eloquence which is called the Sublime. And we see also in all the Books of Scripture, that this Character of Simplicity is nothing else but an Effect of its being the Holy Ghost himself who expresses himself there, and who alone is able to inspire Expressions suitable to the Truths which he alone teaches, and of which he alone can give just Ideas;

which is the reason that we see in many Places of the Scripture Strokes of such an Eloquence as that the Character of it marks clearly that it is God who speaks, and such as no Man could ever have been able to attain to: For what Man, for example, could have ever thought of saying, *He is that He is*, if God himself had not taught *Moses* that Expression, defining himself by these Words, *I am that I am*? <sup>d</sup> What Man could have been able to express the manner in which God created all things, if this divine Historian of the Origin of the World, who has had the Attestation of God himself, had not learned of him what he teaches us by a divine Expression, which marks that it was one bare Word of the Will of God which produced out of nothing all that he created? This is what is meant by these Words of *Moses*, *Let there be Light and there was Light* <sup>e</sup>, and by this Expression of another Prophet, *He commanded and they were made* <sup>f</sup>.

We might give Instances here of many Expressions of this divine Eloquence of the Holy Scriptures, both in the Old and New Testament, whether it be for speaking to the Mind, or for touching the Heart. For in the Old Testament one may more especially admire the Eloquence of the Books of *Moses*, and of the other Prophets, who all of them preached the Word of God to the People; and also the Eloquence of the Book of *Psalms*. And it may be said of the New Testament, that nothing is comparable to the Eloquence of the Words of Jesus Christ, who in a Simplicity of Expression, and in a wonderful Justness of Parables, and in all his other Ways of instructing Men, displays such a Grandeur and Comprehension of Truths, that none but God alone was capable of teaching after that manner, and which made even those whom his Enemies had sent to lay hold of him, say, that never Man spoke as he did <sup>g</sup>.

May we not add as a Stroke of his divine Eloquence, that which shines in his Silence before *Pilate*, who was much more surprized and touched with the Meaning of the Silence of such a Man in those Circumstances <sup>h</sup>, than one could be with any Words whatsoever: So that this very

<sup>d</sup> Exod. 3. 14.

<sup>e</sup> Gen. 1. 3, 5, 14.

<sup>f</sup> Psal. 148. 5.

<sup>g</sup> Never Man spoke like this Man. John 7. 46.

<sup>h</sup> Mat 27. 14.

it to form exact and precise Ideas of all sorts of Objects, and especially of those which do not fall under the Senses, and of confirming it in the just ways of apprehending and reasoning: for the Objects of Logick, of Metaphysics, of Moral Philosophy, and many Objects likewise of Physick, are matters which the Mind apprehends independently of the Senses, which accustoms it to think likewise, and to reason without the help of the Senses, and to be able to discover in all matters that which they have that is most spiritual and most proper to be the Object of the Mind, as will appear by the general Ideas which shall be given here of the Use of every one of these parts of Philosophy.

Logick is the first which opens the way not only to the other Parts of Philosophy, but also to all the other Sciences, as to Divinity, to Law, to Physick, and to the others: for besides this general Use, which we have just now remarked, of accustoming the Mind to Objects that are purely Spiritual, which the other parts of Philosophy have in common with Logick, it is properly the Art of guiding and directing the Mind to form just and precise Ideas of all Things, especially of those which are only the object of the Understanding, and in which the Senses have no share. It is for this Use that this Science considers in all things independently of the Senses, that which is common to them all, such as their Being; or common only to many and not to all, as the Animal Life, which is common to Men and to all sorts of Animals; and that which is common only to a few sorts and kinds of Things, such as the Understanding, that is common to Angels and to Men: and at the same time Logick considers what the different Kinds have peculiar to them, that distinguishes the one from the other. Thus among the Things which have the Animal Life common to them, the Understanding distinguishes Man from the Animals which have this Life in common with him. It is by these Views of what is general and common, either to all sorts of Things, or to many sorts, or to some, and of what each sort has peculiar to it self, that we distinguish that which is called Kinds and Species, which have more or less extent according as the Characters which distinguish them are more or less general, and agree to more or fewer sorts of Things; and it is by the means of those Charac-

ters which make the Kinds and the Species, that Logick gives the Method of distinguishing, of dividing, of defining, that is to say, of conceiving the Order of the Things which have between them some affinity by reason of Characters that are common to them, of ranging every one with those that belong to its Rank, and of separating the one from the others; of giving the precise Ideas of their Natures, which consist in those Characters which they have in common with others, and in those which distinguish them. And for the more exact observance of this justness, this Science teaches Persons to give the definition of the Names of Things before they proceed to define their Natures, the better to avoid Obscurities and Ambiguities in the Expression.

Logick considers the several Qualities which naturally follow the relation that every thing may have to others, such as a Cause to its Effect, a greater thing to a lesser, a Sign to that which it signifies; and it is by these Views, and others of the like nature, of what the Mind is able to distinguish both in the Substance and in the Qualities of all things, that it uses and accustoms it self to apprehend aright and to reason justly, receiving nothing for Truth but Principles that are certain, or Consequences justly drawn from the said Principles. It is also to prevent the drawing from good Principles any other Consequences than what naturally and most certainly follow from them, that Logick gives the Method which it has invented to place the Reasonings in such a regular Order, that the Rules of this Method being observed, it is impossible that the Conclusion of the Reasoning should not convince unanswerably, if the Propositions from whence it is drawn be allowed to be true: and this Certainty is the bare effect of placing those Propositions in a right Order, which makes that the Consequence drawn from them is necessarily linked to them, when those Rules are duly observed.

Of the other three parts of Philosophy, that which has the greatest affinity to Logick, is the Metaphysics, because they consider Things independently of the Senses, and those very things which are corporeal and sensible. Thus Metaphysics consider in all things their Subsistence, their Existence, the essential Properties which God has given to all Beings, and which are in every one  
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its Unity, its Verity, its Goodness: for these three Characters are necessarily in every Thing, and every Being is one in its Nature, altho it may be composed of many different Parts, as a Plant or an Animal: Every Being is true by its Existence, which renders it conformable to the Principle of its Nature; and every Being is good by the bare Effect of its being the Work of God *p*.

It is likewise this Science that considers the different Kinds of Causes and of Principles, and the several manners in which one Thing may be the Cause or Principle of another; that distinguishes also the Spiritual Principles of the several Sciences which lead us to the Knowledge of Truth, such as those of Geometry, of which we shall speak hereafter, which are called Axioms; those of the Moral Philosophy, which are termed Maxims, and those of the other Sciences: and the Science of Metaphysics has also its own Principles, such as this for example, that it is impossible that the same Thing should be and not be at the same time, and other Principles of the like nature. Thus we distinguish in the Metaphysics the Causes which produce the Effects, as the Sun which produces Heat, which is called the efficient Cause; the Principles which make us to act, as the End which we propose to our selves, which is termed the final Cause; the Example which we imitate, and the others.

It is also this Science which raises it self to the Knowledge of the Nature of Angels, and of God, and of the Divine Attributes, not in the manner reserved to the Science of Theology or Divinity, which joins to the natural Reasoning the Principles of Faith, but by the bare Lights of Nature, which furnish several Proofs of the Being of a God, and which imply the Necessity of his Existence, of his Independency, of his Unchangeableness, of his Omnipotence, of his Providence, and of his other Attributes.

Physick differs from Logick and Metaphysics, not only by the distinction of its Object, but also by the manner in which it treats of it: for it has for its Object only Bodies, and it considers in them principally what they have that is material and sensible; their Qualities, their Generation, their Cor-

*p* And God saw every thing that he had made, and behold it was very good. Gen. 1. 31.

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ruption, their Construction, that is, the manner in which they are composed, that which makes and distinguishes the different sorts of Matters, the Conjunction of the little Particles of which all Bodies are composed, the nature of its Parts, that of the several Qualities of Bodies, Colours and others, and of the Light which makes them visible, the Causes of the Motions which is made in Bodies by that which is called Weight, and of those Motions made by the Impression that one Body may receive from another, what that Weight is, what that Impression is, what it is that produces that other sort of Motion; of the Dilatation of liquid Bodies that are heated, which is called Rarefaction; the divers Causes and Effects of that which is named Fermentation, and the other matters of the like nature, which have all of them almost a Character of Obscurity, which makes that they are rather the object of a Labour of the Mind and of a fruitless Study, than of a Science that attains to a clear and certain Knowledge of Things. For it may be said of this kind of Physick, that hitherto it has discovered almost nothing, and that in all appearance it will discover but a very few Things, which will give perfect Satisfaction to a reasonable Mind touching all the matters that it treats of; such as those which have been just now taken Notice of, and others of the like nature. Concerning which it may be said, that as God has given to Men the use of Sciences only for their Wants, he has imparted to them only the Knowledge which they may acquire by Reason and Experience of what may be necessary for the supplying of those Wants; and has hidden from them, as has been said in another place *q*, what would only be the Object of Curiosity; rendering himself equally admirable, both by the Order and Beauty of that which we know of his Works, and by the impenetrability of that which it is not his pleasure that we should know.

Physick has nevertheless its Use; for besides that it teaches some certain Truths, as for example, that which it

*q* See the Treatise of Laws, Chap. 1. Art. 3.

*He hath made every thing beautiful in his time; also he hath set the World in their Heart, so that no Man can find out the Work that God maketh from the beginning to the end. Eccles. 3. 11.*

*As thou knowest not what is the way of the Spirit, nor how the Bones do grow in the Womb of her that is with Child, even so thou knowest not the Works of God who maketh all. Eccles. 11. 5.*

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borrow from Geometry, concerning the impossibility of coming to a final Division of the least Particles of every Body ; that which it takes from Astronomy, for the Sphere, and the Motions either of the Heavens or of the Earth, which make the Days and the Years, and that in some other Matters it discovers several Truths : The Study even of the obscurest Matters in Physick, hath its usefulness in exercising the Minds of the Students by divers Reasonings. This very Physick hath also its Usefulness, in that it leads to another Physick, the Use of which is of great Necessity and Advantage to the Publick, and which hath for its Object the Discovery, by Reasoning and by Experiments on the several Kinds of Bodies and of Matters of all sorts, Animals, Trees, Plants, Minerals and others, of what Qualities they may have that may serve for the Use of Remedies for the several Distempers, and for an infinite number of other Uses in all the Arts : for their great Extent requires that there should be employed in them an infinite number of divers matters which are necessary, either by their bare natural Qualities, or by the several Preparations which the Study of Experience for many Ages has discovered, and which may always be multiplied and brought to greater Perfection by cultivating this Study in the manner as it now is in *France*.

The fourth and last part of Philosophy, which is the Moral Philosophy, hath that in common with Logick and Metaphysicks, that its Object and its Principles are independent of the Senses : for it hath for its Object every thing that relates to Manners, the Nature and the Characters of human Actions, that is to say, of those of a free Will which acts for some End, and which are capable of Good or of Evil, the Nature and the Characters of this Liberty, the several Passions of Man, his Affections, his Habits, the Ends which he proposes to himself, his Inclination to Good and to Happiness either real or apparent ; the Virtues which are called Moral, Prudence, Justice, Fortitude, Temperance ; the Laws and other the like Matters, which are explained in this Science, in the manner that the Metaphysicks explain what relates to God and to his Attributes, that is, by Reasonings drawn from natural Lights. And we see likewise that many Heathen Authors have treated of

this Science. As to which, it is necessary to remark the Consequence of the good Use of its Principles and of the particular Doctrines taught in it, that the Principles of Human Philosophy may not be extended so far as to destroy those of Religion, but that the Principles of Religion may always stand as the prime and fundamental Rules ; and that all the Moral Philosophy may have its Spirit, its Source, and its Foundation in the Spirit of Religion ; and in the Doctrines of Faith which ought to reign in every thing that we learn there.

Since the Consequence of the Integrity and Purity of Manners, and of all the Rules which relate to the matters that are taught in this Human Science of Moral Philosophy, has obliged us to make this last Remark, that no Use ought to be made of it to destroy the Principles of Religion, and the Doctrines of Faith ; we may observe also on the three other Parts of Philosophy, Logick, Metaphysicks and Physick, that it is of importance not only that nothing be mixed with them, and that none of their Principles be turned to the subversion of the Doctrines of Faith, but that care ought also to be taken to avoid in all sorts of Reasonings, upon any matter whatsoever, not only the Subtilties and the useless Curiosities which some mix with what is necessary and useful in those Sciences, but also the bad Use even of their Principles and of their Rules : for altho their Principles and their Rules have their Foundation in Nature, and that therefore a solid Judgment may make an Use of them which may appear to be without Art and wholly natural, yet some Persons use them in their Discourses and Writings, in such a manner as shews the Method and Air of the Schools, as it happens to those who make the like bad use of Rhetorick ; whereas the good use of all the Principles and of all the Rules of Rhetorick, of Logick, and of Metaphysicks, being drawn from Nature, ought to be the Effect of conceiving and of reasoning naturally. So that we ought to use the Principles and the Rules of these Parts of Philosophy, only after the same manner that we use those of Grammar, which we observe naturally without making Reflection, either on the different Nature of the Nouns, the Verbs, the Participles, and the other Words which compose all the Lan-

Languages, or on the Moods and Tenses of Verbs; which must be understood in proportion to the different Uses of all these several Arts, and to the different Manners in which the Habits of them may be acquired.

Before we proceed to the other Arts or Sciences that are taught in the publick Schools, and the chief of which is Geometry, it is necessary to call to mind here the Reflection which has been already made on Physick; That altho that Science hath for its object Bodies and sensible Matters, the Nature of the Parts which compose them, that of their Qualities, and the other Things of the like nature which it considers; yet it gives us but a very little Knowledge of them that has any thing of certainty in it: whereas Geometry, which hath also for its object Bodies and sensible Matters, but which it considers under other Views, teaches nothing about them, which not only is not most certain, but which does not carry with it such an Evidence as that every Mind that is capable of this Science is convinced of every thing which it advances, in the same manner as every one is assured that the Whole is greater than its Part.

This difference between Geometry and Physick, is a natural Effect of the difference of the ways in which the one and the other consider Bodies, and the Matters which are their Object: for whereas Physick ought to consider in Bodies their Causes, their Qualities, in order to discover what is their Nature, which is invisible to the Senses; Geometry does not consider either their Causes, or their Qualities, but only their Quantity, which it considers independently of the Nature of the several sorts of Bodies and of all their Qualities, restraining it self to the bare Consideration of that which enters into the Idea of Quantity. It distinguishes Quantity into two Kinds; one of the Extent of that which is contained, and which consists either barely in length, as Lines, the Points of which make the Extremitities; or in length and breadth together, which make the extremitities of the Bodies, and which is called their Surface; or in length, breadth and depth, which make solid Bodies: the other Kind is of Numbers, which make the quantity of distinct Things. And because the Duration of Time and the Motions of Bodies make also a kind of Quantity; Geometry has likewise its

Use in them, according as the said Duration, and the said Motions are considered under this Idea of Quantity. Thus Geometry considers the several sorts of Lines, strait, crooked, spiral Lines, and others; the several sorts of Angles which those Lines make when they meet in a Point; the Figures of Triangles, of Circles, of Squares and other Surfaces, Pyramids, Cubes, Globes, and other solid Bodies; the Parts of Duration and of Motion: and in every one of all these different Objects, Geometry considers their Nature, their Properties, the Relation that one of them has to others of the same Kind, and then Differences, as whether one is greater than the other; the manner in which one is contained within the other, which is called Reason; the Comparison of the Reason of one to the other, and of another Reason of another Object to another, which is called Proportion; and beginning with the Definitions of the Terms and of the Things which they signify, with the Rules which establish indisputable Principles, such as these, *That two Things equal to a third, are equal among themselves; that if to every one of two equal Quantities other equal Quantities are added, the whole will be equal;* and others of the like Nature; with demands or *postulata* which cannot be refused, such as *that leave be given to draw a Line from one Point to another;* they discover by this Progression an infinite sequel of Truths, the first of which are evident by their necessary Connexion with the Definitions, the Principles and the Suppositions which have preceded. And from these first Truths which become of themselves Principles by reason of their Evidence, one proceeds to others successively, in such a manner as that nothing be advanced which has not the Evidence of a Definition or of a Principle, or which is not demonstrated with the same certainty as Principles have.

It is by this Chain of Definitions, of Principles and of Demonstrations which depend one upon another, that we discover in Geometry an infinite number of Truths which seem to be impenetrable, and some of them which even pass the bounds of all imagination; as for example, that there are Lines, Surfaces and solid Bodies, which compared with other Bodies of the same Kind, can have no common Measure, how little soever it be: and these are called incommensurable Quantities, which



which cannot be compared with one another, as one Number may be with another Number, for all Numbers have for their common Measure at least Unity. But should we divide those Quantities into Particles even to an infinite Number, we could never come at a Particle small enough to serve as a common Measure to those Quantities, as Unity is a Measure common to all Numbers, and all the smallest Particles that one can ever come at, by dividing, always, will be all of them too great to measure exactly those two sorts of Quantities; in the same manner as the number two is too great to be a common Measure of three and of four, or of ten and eleven.

It is not proper to enlarge any more here, either on the matters which are the Object of Geometry, or on the several Manners that are there used to form the most difficult Demonstrations, as in that part of Geometry called Algebra; but it was necessary to make these few Remarks, in order to explain in general the Order of the Method which Geometry takes to prove that which she teaches. And as in Logick we have explained in general its Use for rightly apprehending all sorts of Objects and Reasoning about them; so we ought likewise to remark in the Method of Geometry the Order which it observes for the same use, and to consider at the same time the difference between the Object and Method of Geometry, and the Object and Method of Logick.

This difference consists, as to the Object, in this, that the matters of which Logick treats are of a Kind of which the Truth is not so sensible as the Truths of the Matters treated of in Geometry, and that the Ideas of them are more abstracted. And as for the Method, the difference is this, that the Method of Logick, which is the Art of Syllogism, is susceptible of those false Reasonings called Paralogisms, by which one imposes on those who do not know sufficiently the Rules, or who are not clear-sighted enough to perceive the false Reasoning: but one can never abuse the Method of Geometry, to lead into Error, or to surprize at any time Persons of the shallowest Understanding, if they are at all capable of this Science; since they need only to examine at every step whether every thing is so clear and certain, that there remains no doubt nor obscurity in

it; and whether the Truth of it be evident, either of it self, or by its Connexion with those that have been proved.

It is by this Method of Geometry, that those who have the Knowledge of it ought to form their Reasonings upon all matters, in so far as it is capable of being applied to them: for this manner of Reasoning is more simple, more natural, and more easy than that of Logick, which comprehends many more Rules, the most of which are abstruse, and of which all Understandings are not capable. So that this Method of Geometry is more within the reach of all Capacities, and it is likewise more proper to set every thing that ought to enter into a Discourse of Reasoning in its proper Order, in its true Light, and in its full Force, and to discover all the defects of justness in the Reasoning. This Method may be reduced to two simple Rules; one, not to admit any thing for true which is not either evident of it self, or demonstrated, and the other is to range all the particular Truths which one intends to prove, according as they follow the one from the other. And it is in observance of these two Rules, that the Geometricians begin with defining the Words and the Things of which they intend to speak, with establishing the Principles on which depend the Truths which they are going to prove, and with drawing from those Definitions and from those Principles the Consequences of the Propositions which they shall advance; laying down always in the first place those Propositions that are most nearly linked to the said Definitions and Principles, and then laying down afterwards those Propositions which depend on the first.

And altho it be true, that all sorts of Matters about which one may reason or discourse, do not consist in Truths that are capable of the evidence or Certainty of those of Geometry, yet its Method is nevertheless useful in them: for it is natural to all sorts of Reasonings, of Proofs and of Discourses of what nature soever, whether they be intended for teaching or for other Uses, to begin with that which is clearest, easiest, and most certain; and to observe the natural Order of the Cohesion and Connexion which the Things of which one intends to speak have among themselves.

It is upon the account of this Method, which is so natural and so proper

per to lead the Mind to the knowledge of Truths, and because of the certainty of the Truths that are taught in Geometry, that those who invented this Science, gave it the name of Mathematicks, which signifies Science; distinguishing it from all the other Sciences by its Characters of Order and of Certainty: for which Reason they taught it at the first entring upon the Study of the other Sciences, the better to dispose the Mind for them by this Method. But our Usage has extended this word of Mathematicks, not only to Geometry and to its Parts, such as Arithmetick and Algebra, which consist only in Theory, but also to the Arts which in their practice use the Principles and Rules of Geometry, such as that which is called Mechanics, the Art of Fortification, and such like practised by Engineers.

This great Usefulness of Geometry is not the only one; it hath another Advantage of very great Importance to the Publick: for it is from this Science that are drawn the Principles and many Rules of other Sciences and of several Arts, which are not only very useful, but all of them most necessary; for besides Arithmetick, the Principles of which are a part of Geometry, it is likewise from this Science that are drawn the Principles of Cosmography, of Astronomy, of Chronology, of the Computation of Times, of Geography, of Mechanics, of the Use of moving Force for an infinity of Machines and Instruments necessary in all sorts of Arts, of Architecture, of Sculpture, of Fortification, of Opticks, of Perspective, and of the Art of representing in a Plan the several Objects of sight, which is the foundation of Painting.

It is also in Geometry, that we have the Theoretick Principles of Musick, whether it be that of Human Voices or of Instruments. For it is an Art which consists in dividing the degrees of the elevation and falling of the Voice, which make the different Sounds, in regulating their Order and the Duration of every one of them, which is called Measure; and likewise the Extent of the Intervals when it is necessary to have any between two Sounds, and in distinguishing the Voices or the Instruments which are to bear a part in the Musick into different Parts suited to the Nature of the Voices and of the Instruments; in order to form by the variety of the Voices, and of the

divers Sounds of each Voice, and by the different Measures of those Sounds and of those Intervals, the several Combinations which may make an agreeable Harmony, and which may answer to the sense of the Words that are to be sung, conveying to the Heart the Impressions of Tenderneſs, of Joy, or of other Sentiments and Motions which one desires to raise.

And seeing the Church hath established the Use of Musick in Divine Service, in order to move the Hearts, and to elevate them to the Sentiment which the holy Words which it directs to be sung ought to inspire; and that the said Words require such a Musick as is both grave, moving and easy; that the Use of it may be common to all the faithful, it has ordained in all the Churches where the faithful assemble together for the Worship of God, the Use of a certain manner of Singing composed of Sounds of the same Duration, and of Combinations less figured than those of ordinary Musick. This manner of Singing is for this Reason wholly consecrated to the Church, as being proper by its Gravity to inspire the Spirit of the Words which compose the said Divine Office, and especially of the Psalms, which are the chief and principal Part thereof, and which have been composed in order to be sung. But this Church-Musick loses its Use which was intended by the Church, if those who celebrate and sing the Divine Service, do not observe in it that Gravity, that Modesty, that proper Slowness and Attention that is becoming the Dignity of that Musick which is to express Words inspired by the Spirit of God, and which are addressed to him, either to praise him, or to pray to him, and of Musick which is to make a part of the Divine Worship, in which every thing ought to be solemn and august.

Besides this ordinary Use of Musick in the singing of Psalms which the Church has established for the Celebration of Divine Service, it hath also received the Use of other Musick, and of Instruments. But the vast Liberty of Ornaments in Musick, makes that those who compose Hymns for the Church, not having always the View of proportioning them to its Use according to the Holiness and Dignity of the Words which are to be sung, and of the Sentiments which ought to be inspired, they mix often in their Compositions Ornaments of a Musick

Musick that is but little suited to this Dignity, and to the Gravity which the Spirit of the Church requires; and this would seem to deserve some Reformation, there being some very antient Churches which have intirely laid aside the Use of this sort of Musick in the Divine Office.

The Use of Musick brings to mind here that of Poetry, the Principles of which are taught with the Classick Learning, as has been already remarked: this Use of Poetry is such, that it hath not only its Usefulness but also its Dignity even in the Church, and we see Examples of it in the Holy Writings, where we have Poems inspired by the Holy Ghost, and especially the Psalms which are a kind of Poetry; and the Church approves also of the Use of it for other sorts of Poems, which are the Hymns composed at several Times. For, as has been said of Musick in Divine Worship, that it is of great Usefulness therein by the Effect of the Motions and of the Sentiments which are raised in the Heart by a Musick proportioned to so Holy an Use; so Poetry hath its Beauty and its Dignity by the Elevation of its lively, sublime and rhetorical Expressions, and by their being ranged in such a Measure and Cadency as makes upon the Mind the same Impressions as Musick does on the Heart. It is for this Reason that we give to the figured Language of Poetry the name of Song, which has this double Usefulness, that the politeness and elegance of its Expressions, and its other Beauties, make an agreeable Diversion and Entertainment, and that we gather from the Works of the antient and modern Poets many different Instructions, by Sentences of all kinds, by divers Truths of some Sciences, and even by having from thence Rules of speaking and writing well, by the Facility of acquiring a habit of getting things by heart, and by other ways. But care ought to be taken not to put into the hands of unguarded Youth such Passages of any of the said Poets as contain any thing which may tend to seduce unthinking Minds to Irrigion and Immorality, as has been already observed.

It has been necessary to give these general Ideas of the Sciences and of the Liberal Arts, that are taught in the Universities, Colleges and Schools, to shew, by the relation which these Sciences and Liberal Arts have to the

publick good of the Society, what is the Necessity and Usefulness of them, and by consequence what is the Necessity and Usefulness of having an Establishment of Professors to teach them.

This first Use of Universities, to teach Human Learning, the Sciences and Liberal Arts, which we have been now speaking of, has been followed by a second Use, which is that of giving a kind of Title, which is called a Degree, to those who after having spent a certain limited time in their Studies, have given Proofs of their Capacity by authentick and publick Acts. And the said Degrees are distinguished in two manners; one, from whence this word Degree has been derived, and which consists in this, that they are given one after another in proportion to the length of time that has been spent in Study, and to the greatness of Capacity; the first which is called Master of Arts, the second Batchelor, the third Licentiate, and the fourth that of Doctor.

The other distinction of Degrees is taken from the several sorts of Studies of the Sciences of Divinity, of the Canon and Civil Law, or of Physick. The Degree of Master of Arts, is given after the Study of Philosophy, and is necessary only to those who are willing to rest at that Degree, or to proceed further to the Study of Divinity, to take therein the Degrees of Batchelor and others, if they incline to it, and render themselves fit for it. The Degrees of Batchelor, Licentiate and Doctor are given in Divinity, in the Canon and Civil Law, and in Physick; that is to say, for one of these three Studies; so that there are in the Universities four sorts of Studies, which are called Faculties. The first of Divinity; the second of the Canon and Civil Law, both which make only one Faculty, for one cannot take the Degree in one without the other; the third, is of Physick: and in every one of the said three Faculties there are the three Degrees of Batchelor, Licentiate and Doctor. The fourth is the Faculty of Arts, in which in the Universities of France there is only one single Degree, which is that of Master of Arts.

The Use of the said Degrees is to give to those who have them, the right of exercising Functions, which require a Capacity in some one of those Faculties, or of filling places, whether it be in the Church, or in the Temporal Order

Order of the Society, such as the Offices of Judicature, and the Professions of an Advocate, or Physician.

Seeing our View of treating here of Universities is only with respect to the Publick Law, to show what the Use of them is in a Kingdom, and with respect to what concerns in general the Policy or Government of the said Societies, and the Duties of those who are Members of them; it was not proper to explain here at large the Origin of Universities, the Progress of their Establishment, and other Historical Facts relating to this Subject; for these would be Digressions very remote from the design of this Book. We shall only observe in a few words, the resemblance there is between our Universities, Colleges and publick Schools, in which there are several Professors, and those publick Schools *a* which were kept at *Rome* in *b* the Capitol, and likewise at *Constantinople*, where they taught Grammar, Rhetorick or Eloquence, Philosophy, and the Laws *c*.

Since all Towns cannot have Universities, there are established in most of them Colleges and publick Schools, as is to be seen in many of the Towns of *France*: and it is even ordained by the 24th Article of the Ordinance of *Blots*, that the Archbishops and Bishops shall establish within their Dioceses Seminaries and Colleges for the Instruction of the Youth, both in matters of Learning *d*, and the Service of God.

*a* In publicis Magistracionibus. l. un. C. de stud. liberal. urb. Rom. & Constantinop.

*b* Intra Capitolii auditorium constituti. d. l.

*c* Grammaticos tam Græcos quam Latinos, Sophistas, & Jurisperitos in hac regia urbe professionem suam exercentes, & inter statutos commemoratos. l. 1. C. de profess. qui in urb. Constant. doc. ex ex. leg. mer. comut.

Habeat igitur auditorium specialiter nostrum in his primum, quos Romanæ eloquentiæ doctrina commendat, oratores quidem tres numero, Grammaticos vero decem, in his etiam qui facundia gravitatis pollere noscuntur, quinque numero sicut Sophistæ, & Grammatici atque decem. Et quoniam non his artibus tantum adolescentiam gloriosam operamus institui; profundioris quoque scientiæ atque doctrinæ memoratis magistris sociamus auctores. Unum igitur adjungi cæteris volumus qui Philosophiæ arcana rimetur, duos quoque qui juris ac legum voluntates pandant. d. l. un. in f. Cod. de stud. liberal. urb. Rom. & Const.

*d* Magistros studiorum Doctoresque excellere oportet moribus primum, deinde facundia. Sed quia

But in all the said Colleges, there is only the bare assistance in Studies, without any right to confer any Degrees.

Besides the Universities and Colleges for the teaching of Sciences and Liberal Arts, there are likewise Academies for teaching the Exercises of Riding and Fencing, and likewise those Parts of Mathematicks which relate to Fortification, to Encampments, the ranging of an Army in Battel-Array, and other matters necessary to be known in the Profession of Arms. There are likewise other sorts of Academies for the Study of Arts, such as those of Painting, Sculpture, Architecture and others. But all these sorts of Academies, altho composed of divers Masters for the several Studies and Exercises, are not of the number of Corporations and Communities, unless they be established as such by the Authority of the Prince. And as for the Colleges, they are a part of the Body of the University to which they belong; as in the Towns where there are Universities composed of several Colleges; and the other Colleges which are separated from the Universities, may form Communities, if they be established as such by Letters Patent of the Prince.

All the Rules which concern Universities, Colleges and Academies, are of two sorts; one of those which relate to the Government or Discipline of those Houses, and which may regard their Rights, their Affairs, their Privileges; and the other of those which concern the Duties of the Persons who compose them, in so far as their Functions have relation to the Publick: and these two sorts of Rules shall be the subject Matter of the two following Sections.

singulis civitatibus adesse ipse non possum, jubeo, quisque docere vult, non repente nec temere proliari ad hoc munus, sed judicio ordinis probatus, &c. C. Theod. de med. & profess.

Avoiding profane and vain babblings, and Oppositions of Science, falsely so called. 1 Tim. 6. 20.

Be not carried about with divers and strange Doctrines. Heb. 13. 9.

There is one that sheweth Wisdom in Words, and is hated; he shall be destitute of all Food. For Grace is not given him from the Lord: because he is deprived of all Wisdom. Ecclus. 37. 23, 24.

See the 2d Article of the 2d Section, and the Articles that are there cited.

## S E C T. I.

*Of the Rules which relate to the Government and Discipline of Universities and Colleges.*

## The CONTENTS.

1. *Universities are partly Ecclesiastical and partly secular.*
2. *Two sorts of Rules for the Government of Universities, Colleges and Schools.*
3. *Rules which relate to the Administration of these Communities.*
4. *Rules concerning the Duties of those who are Members of the Universities.*

## I.

1. Universities are partly Ecclesiastical and partly secular.

**U**Niversities are mixed Bodies, partly Ecclesiastical, and partly Secular; for the Profession of the Faculty of Divinity is an Ecclesiastical Ministry, and that of Law and Physick is a Secular Ministry: Thus, the Body of the University is composed of other distinct Bodies, each Faculty forming its own Body, and having its peculiar Rights and Functions separated from the others; and they have all of them together Rights and Affairs which are common to them all, and which out of the said different Bodies form one which comprehends them all *a*.

*a* The Faculty of Divinity hath its Functions which relate to the Church, and it can be composed only of Ecclesiastics; and the Faculties of Law and of Physick respect the Temporal State, and may be exercised by Lay-men. But it may be observed as to the Faculty of Law, that altho the Canon Law, which is a part of it, contains many Matters that are purely Ecclesiastical and Spiritual, the Profession of teaching them may be exercised by Lay-men: which has been established most probably on this account, because the Ecclesiastical and Spiritual matters of the Canon Law are there mixed with an infinite number of Temporal Matters which belong to the Civil Law.

## II.

2. Two sorts of Rules for the Government of Universities, Colleges and Schools.

The Government of Universities, of Colleges, of Schools, in the same manner as that of the Corporations of Towns, hath its Order proportioned to the Use and to the Functions peculiar to those Kinds of Communities; which comprehends two sorts of Regulations necessary for forming the said Order: the first is of those which relate to the Administration and the Preservation of

the Goods, the Rights and the Privileges by which the said Bodies subsist, and the Discipline that is necessary to be observed in them for keeping them in Order; and the second, which regards the Duty of those who compose these sorts of Bodies.

*b* Hac lege decernimus, ut qui in singulis scholis militant, quique post emensa stipendiorum curricula ad primiceriorum gradum perveniunt, & adorata nostræ divinitatis purpura, virorum clarissimorum comitum inuenerint dignitatem: tam cingulo quam privilegiis omnibus sibi nec comperatibus persistant: ac deinceps usque ad finem vitæ foro iustæ studij tantummodo subiaceant: nec ex alterius cupiditate sententia civile subire liguum compellantur. In criminalibus sane controversiis & in publicis tribus ita etiam adversus tales viros provincias moderantum congruam jurisdictionem volumus observari, ne sub prætextu concessi privilegij, vel flagitiorum crescat autoritas, vel publica vacillet utilitas. *l. 2. C. de priv. Schol.*

See the following Article, and the Text there quoted on it.

## III.

As to what concerns the Administration and the Preservation of the Goods, the Rights and the Privileges of Universities, Colleges and Schools, and the other Interests of these sorts of Communities, and the Discipline which is to maintain Order in them,

*c* Habita quidem super hoc diligenti inquisitione Episcoporum, Abbatum, Ducum, omniumque iudicum & aliorum procerum sacri nostri palatii examinatione, omnibus, qui causa studiorum peregrinantur, scholaribus, & maxime divinarum atque sacrarum legum professoribus, hoc nostra pietatis beneficium indulgemus, ut ad loca, in quibus literarum exercitium studia, tam ipsi quam eorum nuntii veniant, & in eis secure habitent. Dignum namque existimamus, ut cum omnes bona facientes, nostram laudem & protectionem omnimodo mereantur, quorum scientia tonus illuminatur mundus, & ad obediendum Deo & nobis ejus ministris vita subditorum informatur: quadam speciali dilectione eos ab omni injuria defendamus. Quis enim eorum non mereatur, qui amore scientiæ exules, facti de divitibus pauperes, semper ipsos exinanunt, vitam suam multis periculis exponunt, & a vilissimis læpe hominibus (quod graviter ferendum est) corporales injurias sine causa perferunt? hac igitur generali & in perpetuum valens lege decernimus, ut nullus de cætero tam audax inveniat, qui aliquam scholaribus injuriam inferre præsumat, nec ob alterius cujuscumque provincie delictum sive delictum (quod aliquando ex perversa consuetudine factum audeamus) aliquod dominum eum inferat; fortuita hujusmodi sacre constitutionis transgressionibus, & etiam ipsis locorum rectoribus, qui hoc vindicare neglexerint, restitutione rerum ablatarum ab omnibus exigendam in quadruplum: notaque infamiam eis ipso jure irrogandam, dignitate sua se caruros in perpetuum. Verumtamen si licet eis quæpiam super aliquo negotio movere voluerit, hujus rei opinione data scholaribus, eos coram domino vel magistro suo vel ipsius civitatis episcopo, quibus hanc jurisdictionem ædibus conveniat. Qui vero ad alium judicem eos trahere tentaverit, etiam si causa justissima fuerit, a tali conamine cadat. *Auth. habita C. de filiis pro patr.*

they

they have their Rules established or approved by the Ordinances of the Kingdom, and by their own peculiar Statutes; whether it be in relation to the manner of electing the Persons who are to look to the Observance of the said Discipline, and who are to take care of their Affairs, and of the Preservation of their Privileges; or of appointing those who are to exercise the several Functions of the Community, in every thing that relates to the Administration, the Discipline, and the Order of the said Houses: and besides the Rules which are peculiar to those Houses, they have in general the Rules which have been explained in the 2d Section of the Title of Communities.

## IV.

1. Rules concerning the Duties of those who are Members of the Universities.

As to the Duties of those who compose the Universities, the Colleges and Schools, every one of the said Bodies hath its peculiar Rules, which are of two sorts; one is of those which concern the Duties of the Persons who have the Direction of the Government and Discipline of the said Houses, in so far as they relate to that Function; and the other is of the Rules of the Manners and Duties of the Governours and Professors, in what concerns their Functions which have a relation to the Publick. Thus in the Universities they have Statutes which regulate the Order and Administration of them, and the Duties of the Persons who are appointed to take care of the said Order and Administration: the Statutes contain likewise the Rules peculiar to each Faculty, as to the time required for finishing the Studies thereof, the manner of examining the Students, and that of conferring Degrees; they contain also the Rules of the Manners and particular Duties of those who have Offices, and of those who are Professors. And seeing these sorts of Rules are almost all of them arbitrary, and that they are to be met with in the Statutes of the Universities, and in the Ordinances which confirm them, it is not proper to set them down here; but we shall explain such of those Rules as are of natural Equity, immutable and indispensable; and they shall be the subject-matter of the following Section d.

d See the particular Statutes of the Universities, and the following Sections.

## S E C T. II.

*Of the Duties of those who are Members of Universities, Colleges, Academies; and of all Professors of Sciences and Liberal Arts.*

**B**Y the Duties treated of here, we are to understand those which relate to the Functions in which the Publick is concerned; and according to this View it is necessary to distinguish two sorts of Persons in the Universities, Colleges and Schools: the first is of those who are set over the said Societies as Heads or Governors, to see that the Order and Discipline thereof be duly observed; and the second is of those who under those Governors profess the Sciences and Arts of which the Studies are there established. Thus the Universities and Colleges are under the direction of those who exercise the different Offices under different Names, according to the several Usages, whether it be that of Rectors, Deans, Syndicks, Principals, Provisors, or others. Thus there are in those Societies Professors of Arts and Sciences; and we may take in under this name of Professors, as to what concerns the Rules of their Duties, those who instruct Youth *a*, and who teach them out of the Universities and Colleges, either some Art or some Science, at a publick School; and even those who teach the Exercises belonging to the Profession of Arms.

*a Ut pueri juvenesque in divino cultu ab idoneis & piis magistris & sacerdotibus recte instituuntur, & singulis diebus, horis consecutis pro more institutioneque majorum res divina peragantur, eque non solum diebus dominicis & festis, sed etiam aliis intersint Scholastici. Art. 2. of the Statutes of the Faculty of Arts.*

*Videant magistri, ne vitiis Scholasticorum, sive in moribus, sive in disciplina, indulgeant: sed in eos pro delicti ratione animadvertant. Art. 9. ibid.*

*My Son, gather Instruction from thy Youth up; so shalt thou find Wisdom till thine old Age. Ecclesi. 6. 18.*

*My Son, despise not the chastening of the Lord; neither be weary of his Correction. For whom the Lord loveth, he correcteth, even as a Father the Son, in whom he delighteth. Prov. 3. 11, 12.*

*How have I hated Instruction, and my Heart despised Reproof? and have not obeyed the Voice of my Teachers, nor inclined mine Ear to them that instructed me? Prov. 5. 12, 13.*

*He that rejecteth Instruction, despiseth his own Soul: but he that heareth Reproof, getteth Understanding. Prov. 14. 32.*



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## I.

1. The first Duty, to observe the Statutes.

SINCE the Universities, Colleges and Schools have their Statutes and their Regulations established or approved by the Ordinances of the Kingdom, and that the said Statutes are the Foundations of the Order and Discipline of those Houses, and regulate the Duties of the Persons who compose them; we may set down for the first of the said Duties, that of observing the Statutes and the Regulations a.

The Edicts and Ordinances of the Kings our Predecessors in relation to Universities, shall be kept and observed, together with the Statutes, Regulations and Decrees, made concerning the same. Ordinance of Lewis XIII. in 1614.

See the Ordinances relating to this matter. It is by the observance of these Regulations that the said Bodies are to be kept in Order.

See the Texts quoted in the Preamble of the said Section.

## H.

As to the Duties of those to whom the Care and Direction of Universities and Colleges is committed, the most important of those which concern more directly the publick Good, is that of watching over the Conduct, the Manners and the Doctrine of the Professors; and taking care that the Professors of Divinity do not advance or teach any thing which may impugn any Doctrine of the Church, whether it be in matter of Faith, or of Manners, or of the Church Discipline; and that the same Professors and others also teach nothing contrary to Law and to good Manners; but that on the contrary they inspire into their Disciples, both by their Example and by their Doctrine, good Principles of Morality, and of the several Duties incumbent on them, even those of good Subjects, such as the Duty of Obedience to the Prince, and to the Orders of the Courts of Justice &c.

*b* Pueri juvenesque qui instituuntur, imprimis Regi Christianissimo bene precari & obedire, & magistratibus parere doceantur. Art. 6. of the Statutes of the Faculty of Arts.

Ad docendam & regendam juventutem magistros probatae vitae & doctrinae recipiant, qui suo munere recte fungi noverint: quorum mores imprimis spectandi, ut pueri ab his & litteras simul dicant & bonis moribus imbutantur. Art. 1. *ibid.*

Lustrent cubicula & libros Scholasticorum, ut ceteriores fiant an apud illos sint libri improbae doctrinae, &c. Art. 20. *ibid.*

I opened my Mouth, and said, Buy her for your selves without Money. Put your Neck under the Yoke, and let your Soul receive Instruction, she is hard at hand to find. *Reclus. 51, 25, 26.*

The Rod and Reproof give Wisdom. *Prov. 29. 15.*

Bow down his Neck while he is young, and beat him on the sides while he is a Child, lest he wax stubborn, and be disobedient unto thee, and so bring sorrow to thine Heart. Chastise thy Son, and hold him to Labour. *Ecclus. 30, 12, 13.*

Altho these Texts have not all of them a precise relation to the Rule, yet they may be applied to it, since they naturally agree to the Functions of those who have the Government and Direction of Universities, Colleges and Schools.

## III.

As for the Professors of Sciences and Liberal Arts, their first Duty is to know them well, and to have the Gift of teaching them well, by the Faculty of expressing themselves clearly and in proper terms, by observing the Order and the Method which agree to each Art and each Science, by setting things that are obscure in a clear Light, by discerning and picking out all that is essential, useful and necessary, and by cutting

2. The Duty of those who are the Heads and Governours of those Societies.

3. The first Duty of Professors, is Capacity.

cutting off what is useless and superfluous. And if the Persons who offer themselves to this Employment should fail in their Duty to do Justice to themselves, by offering to engage in this Function without the necessary Capacity, it is the Duty of those whose business it is to elect or to admit them, to judge of their Qualifications &c.

Cum omnium regnorum, & populorum felicitas, tum maxime republicæ Christianæ salus a recta juventutis institutione pendeat: quæ quidem rudes adhuc animos ad humanitatem flectit; steriles alioquin & infructuosos, republicæ munis idoneos & utiles reddit, Dei cultum in parentes & patriam pietatem erga magistratus reverentiam & obedientiam promoveret. *Art. 32. of the Statutes of the Faculty of Arts.*

Grammaticos tam Græcos quam Latinos, Sophistas, Jurisperitos in hac regia urbe professionem suam exercentes, & inter statutos connumeratos, si laudabilem in se probis moribus vitam esse monstraverint, si docendi peritiam, faciundiam docendi, interpretandi subtilitatem, copiamque differendi se habere patefecerint, ex eorum amplissimo judicante digni fuerint æstimati? Cum ad viginti annos observatione jugi ac sedulo docendi labore pervenerint, placeat honorari, & his qui sunt ex vicaria dignitate connumerari. *l. un. de profess. qui in urb. Const.*

Sed quia singulis civitatibus adesse ipse non possum, jubeo, quisquis docere vult, non repente nec temere prosiliat ad hoc munus, sed judicio ordinis probatus decretum curialium mereatur, optimorum consensante consensu. *l. 7. C. de profess. et med.*

Altho the last words of this Text have not an exact relation to our Usage, yet it was not proper to leave them out, because of the sense which they contain, and also because this long Service deserves some Recompence, or some Consideration, particularly with regard to Manners.

See the following Article.

#### IV.

The first Duty of Capacity implies that of not mixing in their Writings and in their Lectures any Principle, or any Doctrine which may be contrary either to Religion, or to the Civil Government, to the Laws, or to good Manners; and that of joining to the Purity of their Doctrine, and to the Art of teaching well, a Probity without blemish, and a good Example of Life and Conversation, that they may imprint on the Minds and Hearts of their Disciples the Principles and the Sentiments of all their Duties, with as much or rather more Care, than what they take to teach them the Principles and Maxims of Arts and Sciences &c.

Magistros Auditorum Doctoresque excellere oportet moribus primis, deinde scientia. *l. 71 C. de profess. et med.*

Qui ad Theologicæ Studium accedit, prius Deum inveniat, ut in tribus animi subordinationibus nihil suo iudicio tribuat. *Art. 1. of the Statutes of the Faculty of Divinity.*

Doctores morum integritate, viæ probitate, & exemplo præ cæteris perliceant, ut suæ professionis expectationem sustineant. *Ibid. Art. 28.*

Nihil a doctrina Christiana alienum, nihil contra Patrum orthodoxorum decreta, nihil contra regni, regnique Gallici jura, & dignitatem disputetur aut proponatur. si secus fecerint, & Syndicus & præses & respondens extra ordinem puniantur. *Ibid. Art. 23.*

Quoniam interest nostra animum liberorum nostrorum non corrupti. *l. 14. §. 1. in f. ff. de servo corrupto.*

Strictly enjoining and prohibiting all Bachelors, Licentiates, Doctors and other Persons, of what Quality and Condition soever, to defend and maintain, read and teach, directly or indirectly, either in the publick Schools, or elsewhere, any Propositions contrary to that of the Declaration of the said Faculty of Divinity, or to compose any Writing contrary thereto, upon exemplary Punishment; and to the Syndicks of the Universities, and to the Doctors who shall preside at the Acts, to suffer any thing contrary thereto to be inserted in any Thesis, upon pain of answering for it in their own Names, and to be prosecuted for the same in an extraordinary way. *King's Edit. of Aug. 4. 1663.*

#### V.

Seeing the Duties proper to each Profession are Consequences of the Functions that are exercised in it, and ought to be proportioned to them, and that one of the principal Functions of the Universities is to confer the Degrees in each Faculty on those who have acquired a Capacity to deserve them; it is a capital Duty of the Professors and of those who are appointed to be Examiners and Judges of the Capacity of the Students who apply for Degrees in any one of the Faculties, not to grant them except to those who are worthy of them, and to refuse them to such as are unworthy. For the easiness of granting Degrees to those who want Capacity for them, destroys the intention of the Laws which require a Capacity in the Persons, and which intrust to those Professors and Examiners the Right to judge of the Capacity of the Person, and to bear witness of it; which Testimony of theirs, by reason of too great a facility, becomes Perjury against the Laws and Statutes which they have sworn to observe; and by this means they let into the Church and into the State unfit Persons, who by reason of their Degrees are admitted into Posts of great importance, of which they are altogether unworthy. This Abuse is still greater, if they join to the Testimony of Capacity in those who have it not, the Testimony also of their having finished the time required

5. Another Duty, not to confer Degrees on Persons that are incapable of them.

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required for the Study, in favour of those who neither have Capacity, nor are of sufficient standing to take their Degrees: for one cannot give this Testimony of having finished the time appointed for the Study, not even in favour of those who in a less time than is required by the Statutes shall have rendered themselves capable of the Degree, seeing it is lawful in no case to bear witness against the Truth *e.*

*e* Doctores, qui jus habebant ferendi suffragii, solemnū jurejurando se obstringant, se nihil gratiæ, nihil favori daturus, sed veritatis fidele testimonium lauros. *Art. 32. of the Statutes of the Faculty of Divinity.*

*Neither lye one to another. Lev. 19. 11.*

*He that speaketh Truth sheweth forth Righteousness; but a false Witness Deceit. Prov. 12. 17.*

*Wherefore putting away lying, speak every Man Truth to his Neighbour: for we are Members one of another. Eph. 4. 25.*

It is in order to prove the Capacity of the Persons, that Laws demand the Testimony of the Universities by the Degrees which they confer: so that the Injustice of conferring them on Persons who are incapable, is a manifest Disobedience to the Laws, and has the same Character that a Declaration would have which should be made by those who give Degrees to Persons incapable of them, that altho they know them to be such, yet they think they ought to be admitted to Places whereof their Incapacity would render them unworthy. And tho by the 75th Article of the Ordinance of *Moulins*, the Bishops are empowered to examine Graduates, as in the Case of Law-Suits touching the Possession of Benefices, yet the Bishops Examinations are not decisive; and the said Ordinance does not discharge those who have the Power of conferring Degrees, from the Obligation they are under of a faithful discharge of their Duty, from which nothing can exempt them. And it is the same with respect to the Degrees necessary for being admitted to Offices of Judicature, tho in order to their Admission they are to undergo another previous Examination by the Judges who are to admit them. For all those Persons, Bishops, Magistrates and Professors have their distinct Duties, which are independent one of another, so that every one is to render an account of his own Duty.

To which Degrees no Person shall be received, unless he shall have studied for the space of three Years in the said University, or in some other, for some part of the said time, or in the said University for the Surplus, of which he shall bring a sufficient Certificate, and unless he has performed a publick Exercise, upon pain of forfeiture of the Salaries of the said Doctors, and of Nullity of the said Letters. And we likewise prohibit the said Doctors and others to grant or deliver any Letters of Degrees except to Persons who are present, and have given the aforesaid Proof of their Capacity in their Presence, and publicly in the said University. *Ordinance of Lewis XIII. in 1564. Art. 46.*

## VI.

6. Duty in giving Opinions about mat-

It is also one of the Functions of Universities, peculiar to the Faculty of Divinity, to give Opinions touching

Doctrines relating to Matters of Faith <sup>ters of</sup> or Manners, or to the Discipline of the <sup>Faith and</sup> Church, on such occasions as the inter- <sup>Discipline.</sup>posing of their Authority may be of use; and this Function makes it a Duty incumbent on them to give their Opinions agreeable to the Purity of the Laws of the Church *f.*

*f* And what cause soever shall come to you of your Brethren that dwell in their Cities, between Blood and Blood, between Law and Commandment, Statutes and Judgments, ye shall even warn them that they trespass not against the Lord, and so Wrath come upon you, and upon your Brethren: This do, and ye shall not trespass. 2 Chron. 19. 10.

*And my Speech and my Preaching was not with enticing Words of Man's Wisdom, but in Demonstration of the Spirit and of Power. 1 Cor. 2. 4. 5.*

*Take heed unto thyself, and unto thy Doctrine. 1 Tim. 4. 16.*

*See 2 Pet. 1. 20, 21.*

*Be steadfast in thy Understanding, and let thy Word be the same. Be swift to hear, and let thy Life be sincere, and with Patience give answer. If thou hast understanding, answer thy Neighbour; if not, lay thy Hand upon thy Mouth. Honour and Shame is in Talk, and the Tongue of Man is his Fall. Ecclesi. 5. 10, 11, &c.*

*Wisdom that is hid, and Treasure that is boarded up, what Profit is in them both? Ecclesi. 20. 30.*

*He that worketh Mischief, it shall fall upon him, and he shall not know whence it cometh. Ecclesi. 27. 27.*

The Doctors who give Opinions in Matters of Faith and Discipline, exercise a kind of Function of Witnesses, by the Testimony which they ought to render of the Doctrine of the Church; and they exercise also a kind of Function of Judges; for their Opinions are as it were Decisions. So that we may consider them under both these Views, as Testimonies and as Judgments; and altho the Function of a Witness be different from that of a Judge, yet the bearing Testimony to Truths of this nature, which are not Facts but Doctrines, is not so much a bare Testimony as a Judgment, to which recourse ought to be had in Cases that may deserve it.

*Stand in the multitude of the Elders, and cleave unto him that is wise. Be willing to hear every goodly Discourse, and let not the Parables of Understanding escape thee. Ecclesi. 6. 34, 35.*

*Counsel in the Heart of Man is like deep Water, but a Man of Understanding will draw it out. Prov. 20. 5.*

*Without Counsel Purposes are disappointed; but in the multitude of Counsellors they are established. Prov. 15. 22.*

See the Texts cited on the 8th Article of this Section, which may be applied to this Rule.

## VII.

Since it is of infinite Consequence not to suffer Books to be printed which concern either the Faith, or the Rules of Christian Piety, or the Discipline of the Church, without an Examination, and an Approbation which may assure the Publick of the Purity of the Doctrines of the said Books, and that they

7. Duty of those who are appointed as Juris the printing of Books.

they contain neither Heresy, nor Errors, nor any thing that may insinuate into the Minds of those that read them false Principles; it is a Duty incumbent on those Doctors of Divinity who are appointed in the Universities to license Books, to examine, and to approve, reject, correct or censure those sorts of Books: and this Duty obliges the Censors or Licensers to read over the Books carefully, that they may be able to give a true Judgment, such as the Consequence of the Approbation, which they are to give, demands g.

g Nullus magistrorum, inconsulta facultate, libros approbet, sub pœna privationis a juribus & honoribus Facultatis. *Art. 1. of the Statutes of the Faculty of Divinity.*

Quod de cætero perpetuis futuris temporibus nullus librum aliquem, seu aliam quancumque scripturam, tam in urbe nostra quam in aliis quibuscumque civitatibus & diocœsibus, imprimere seu imprimi facere præsumat, nisi prius in urbe per vicarium nostrum & sacri palatii magistrum, in aliis vero civitatibus & diocœsibus, per Episcopum, vel alium habentem pernam scientiæ libri seu scripturæ hujusmodi imprimendæ, ab eodem Episcopo ad id deputandum. ac inquisitorem hæreticæ pravitatis, in quibus librorum impressio hujusmodi fieret, diligenter examinetur, & per eorum instantis propriæ subscriptionem, sub excommunicationis sententia gratis & sine dilatione imponendam, approbenur. Qui autem secus facere præsumpsit, ultra librorum impressorum amissionem, & illorum publicam combustionem, ac centum ducentorum fabricæ basilicæ primorum Apostolorum de urbe, sine spe remissionis, solutionem, ac omnis exercitii impressionis suspensionem excommunicationis sententia innodatus existat. *Concil. Bas. sess. 4. sub Leone X. ann. 1515.*

Quoniam vero pervenit ad pias nostras aures, quod quidam doctrinas quasdam conscripserunt & ediderunt ambiguas, & non per omnia ac præcisè congruentes expositiæ orthodoxæ fidei nostræ a sancta Synodo eorum sanctorum Patrum qui Nicææ & Ephesi convenerunt, & a Cyrillo piæ memoriæ qui fuerat magnæ Alexandriæ civitatis Episcopus; jubemus, facta hujusmodi scripta sive antea, sive nunc (potissimum autem ea quæ Nestorii sunt) comburi & perfectissimo interitui mancipari, ita ut in nullius cognitionem venire possint. His, qui talia scripta aut tales libros habere aut legere sustinuerint, ultimum supplicium experientis de cætero nulli patiente licentia, præter expositam fidem (ut diximus) tam Nicææ quam Ephesi, aliud quid vel dicere vel docere transgressoribus nimirum hujus nostri divini præcepti, ei pœnæ quæ continetur lata adversus impiam Nestorii fidem lege subsciendâ. l. 3. §. 3. *C. de sum. Trinit.*

See the Ordinance of Men. II. of December 11. 1547.

### VIII.

The Difficulties which happen to all sorts of Persons in their Conduct and in their Affairs, for steering a right Course between their Duties and their Interest, which very often are opposite one to the other, oblige those who happen to be in this Condition, and who are desirous to do just and equi-

table things, to have recourse to a faithful Counsel for a Solution of those Difficulties, and the way is to chuse Persons who by their Learning, their Understanding, their Experience and Probity, may be able to decide those sorts of Doubts which are called Cases of Conscience; and it is for this end that People naturally address themselves to those Doctors, who ought to have that Knowledge which is called in the Style of the Gospel the Knowledge of the Kingdom of Heaven. So that this Function makes it a Duty incumbent on them to know exactly the divine and human Laws, and the other Rules on which the Decisions of the Difficulties about which they are consulted may depend, to apply themselves with diligence to understand thoroughly the Facts and the Questions, and to give their Opinion out of a sincere love of Truth and Justice, without complying with the Interests and Passions of those who consult them, and without using any Severity or other Rigour than that which is indispensable in the Eye of Justice. For it is Justice herself which ought to decide by the Spirit of her Rules; which being made not for any one Person in particular, but for all Men in general, ought to be applied according to their genuine Use, without any regard to Favour, or respect of Persons, and without distinguishing the Interest of the Person who consults from the opposite Interest of the other Party; because it is as it were a Judgment that is render'd between them, and in which it is necessary to maintain the Right both of the one and of the other h.

h Every Scribe which is instructed unto the Kingdom of Heaven. Mat. 13. 52.

To give Knowledge of Salvation unto his People. Luke 1. 77.

Because they have seduced my People, saying, Peace, and there was no Peace. Ezek. 13. 10.

Moreover this was not enough for them, that they erred in the Knowledge of God, but whereas they lived in the great War of Ignorance, those so great Plagues called they Peace. Wisdom of Solomon, 14. 22.

Wo unto them who call Evil Good, and Good Evil; who put Darknes for Light, and Light for Darknes. Isaiah 5. 20.

He that faith unto the wicked thou art righteous, him shall the People curse, Nations shall abhor him. But to them that rebuke him shall be Delight, and a good Blessing shall come upon them. Every Man shall kiss his Lips that giveth a right Answer. Prov. 24. 24, 25, 26.

The Decisions of those who solve Cases of Conscience ought to have nothing in them contrary to the Spirit of Religion, nor any thing that may be inconsistent with the Dignity and the Respect that is due to the Prince.

j The

g Duty of those who are consulted about Cases of Conscience.

¶ The Doctors who resolve Cases of Conscience, and those who give Opinions in Matters of Faith, of Manners, and of Church-Discipline, of whom mention has been made in the sixth Article, are obliged, in order to acquit themselves worthily of this Duty towards the Publick, to draw the Knowledge of these Matters from the Fountains themselves, that they may be the better able to resolve the Difficulties that shall be proposed to them. Those Fountains are the Truths dispersed in the Holy Scriptures; so that the Doctors and others who are consulted in Cases of Conscience, and who give Opinions in Matters of Doctrine, ought to have recourse to those Books inspir'd by the Holy Ghost, where they will perceive in the Truths which are there expressed in a plain Style, the Grandure and the Majesty of the Divine Wisdom, which reveals them unto us, and his Goodness in laying them before us in a manner suited to our Weakness: and they will there discover the Light of those Truths whereby to enlighten the Understanding, and a Charm wherewithal to move the Heart. Thus they ought to look upon the Books of the Holy Scripture as a *Depositum* in which the Spirit of Jesus Christ resides. The Doctors exercise in the said Functions the Office of Pastors of Souls; and Jesus Christ being the true Pastor, it is of him that they ought to learn the Rules by which they may be able to acquit themselves worthily of so great a Ministry, and which may also be of very great use to the Publick, seeing on those occasions they exercise a kind of Function of Judges, and may by this

*a The Spirit of the Lord God is upon me, because the Lord hath anointed me to preach good Tidings unto the Meek; he hath sent me to bind up the Broken-hearted, to proclaim Liberty to the Captives, and the opening of the Prisons to them that are bound; to proclaim the acceptable Year of the Lord, and the Day of Vengeance of our God, to comfort all that mourn. Isa. 61. 1, 2.*

*For in his Hand are both we and our Words; all Wisdom also and Knowledge of Workmanship. For he hath given me certain Knowledge of the things that are, &c. Wisdom of Solomon 7. ver. 16, 17.*

*For as the Rain cometh down, and the Snow from Heaven, and returneth not thither, but watereth the Earth, and maketh it bring forth and bud, that it may give Seed to the Sower, and Bread to the Eater: So shall my Word be that goeth forth out of my Mouth: it shall not return unto me void, but it shall accomplish that which I please, and it shall prosper the thing whereunto I sent it. Isa. 55. 10, 11.*

way, which is so holy and so natural, terminate by the Prudence of their Counsel, and the Equity of their Decisions, the Differences which may arise between particular Persons.

## IX.

Of the Rules which have been already explained in this Section, those of the five first Articles belong to all the four Faculties, and the Rules of the three last Articles concern only the Faculty of Divinity; but there are other Rules peculiar to those who having received Degrees in the Faculties of Law and Physick, exercise the Profession of them; and these Duties are to be distinguished from those which we have just now explained, as shall be said in the Article which follows.

*i See the Article which immediately follows, and also the others which come after.*

## X.

There is this difference between the Faculties of which there are Professors in the Universities, that those who are barely Graduates in the Faculty of Divinity and in that of Arts, do not exercise their Profession in publick in any Matter which has a direct tendency or relation to temporal Concerns, for the use of any Persons in particular, to whom the said Exercise of their Profession may be useful or hurtful; whereas those who are Graduates in the Faculties of Law or Physick, may exercise their Professions in Matters relating to the temporal Interest of particular Persons, and in which they may be either useful or hurtful to them. Thus Judges and Advocates exercise a Profession, of which the good or bad Use affects the temporal Interest of the particular Persons whose Affairs are in their hands. Thus Physicians exercise a Profession, upon the good or bad Use of which depends the Health, nay the very Life of the particular Persons who call for their Assistance. So that the Persons who exercise the said Professions, are engaged to other Duties than those who teach them; and those Duties have their Rules, which it is necessary to explain, as being a Part of the Publick Law: And as the Rules of the Duties of Judges, and of Advocates, are to be explained in their proper place, in the second Book; those concerning the Duties of Physicians have their Place here, and shall be the subject

*9. The subject matter of the following Articles.*

*10. Professors whose Functions have no relation to Temporal Affairs.*

ject Matter of the following Articles; pre-supposing for the first of their Duties, that they have render'd themselves fit for the exercise of their Profession, and that they have deserved the Degrees they have received, after having finished their Studies in the said Faculty l.

l. By the Roman Law those who executed the Municipal Offices in Towns, chose a certain number of Physicians, and were obliged to inform themselves of their Manners, and of their Capacity.

Medicorum iura numerum præfixum constituendum arbitrium non Præfidi Provinciæ commissum est, sed ordinis et possessoribus cuiusque civitatis: ut certi de probitate morum, et perita attis elegant ipsi, quibus se liberisque suos in ægitudine corporum committant. l. 1. ff. de decret. ab ord. ff.

Si quis in Archiatu defuncti locum est promotionis meritis aggregandus, non ante eorum particeps fiat, quam primis qui in ordine reperiantur septem, vel eo amplius iudicantibus idoneus adprobetur. l. 10. C. de Profess. et Med.

But altho the Physicians had been approved of, they were nevertheless to answer for the Faults which they might commit against the Rules of their Professions: for altho it be true, that we ought not to impute to Physicians the Death of their Patients, yet they ought to be made answerable for the Evil which they occasion by their Ignorance; and the Pretext of human Infirmary ought not to screen those from Punishment who cheat and impose upon Mankind in a danger of so great Consequence as is that of Life.

Sicuti medico imputari eventus mortalitatis non debet, ita quod per imperitiam commisit imputari ei debet, prætextu humanæ fragilitatis delictum decipiens in periculo homines innoxium esse non debet. l. 6. §. 7. ff. de off. præf.

Imperitia quoque culpæ adnumeratur, veluti si medicus ideo servum tuum occiderit, quia male eum secuerit, aut perperam ei medicamentum dedit. §. 7. inst. de lege Aquil.

Si medicus servum imperite secuerit, vel ex locato, vel ex lege Aquilia competere actionem. l. 7. §. ult. ff. eod.

It appears by this last Text, that in those Days the Physicians practised Surgery. According to the Usage in France, the Capacity of Physicians is proved by the Degree of Doctor, which they ought to have before they can regularly practise Physick, as it has been regulated by the 87th Article of the Ordinance of Blois.

It had been before ordained by an Ordinance of Charles VI. of August 7. 1390. that Information should be given against Physicians and Surgeons who had not Knowledge and Capacity sufficient for the Exercise of their Profession; and they were forbid to practise, until they should be found capable by the Persons whose Business it was to judge thereof. See the Ordinance of Lewis XIII. at Paris 1616. in relation to the different Examinations they are obliged to undergo.

#### XI.

It is the Duty of a Physician who has begun to cure one of a Distemper, to continue his Attendance on him while the Distemper lasts, especially in Cases where there is any Danger, unless he have some just Excuse for not doing it; and it is with much more rea-

son that Surgeons are bound to continue to dress the Wounds, and the other Sores which require the Use of Surgery m.

m Qui bene secuerit & dereliquit curationem, si curas non erit, sed culpa reus intelligitur. l. 8. ff. ad leg. Aquil.

Præterea si medicus qui servum tuum secuit, & dereliquit curationem ejus, & ob id mortuus fuerit servus, culpæ reus erit, imperitia quoque culpæ adnumeratur: veluti si medicus ideo servum tuum occiderit, quia male eum secuerit aut perperam ei medicamentum dedit. §. 6. et 7. eod.

#### XII.

If any one not having the Probity and the Honour that ought to accompany the Profession of Physick, exercising Functions or Operations of Surgery, should demand from the Patient himself, or his Relations, some Composition of a Reward, which the Danger would oblige them to promise him; he might be justly condemned, not only to make restitution of what he had exacted in this manner, but likewise to undergo other Punishments which the Quality of the Fact and the Circumstances may deserve, and much more so, if he himself had made the Wound or the Sore worse, on purpose to oblige the Patient to promise him this Reward n.

n Si medicus, cui curandos suos oculos qui eis laborabat commiserat, periculum amittendorum eorum per adversa medicamenta inferendo compulsi, ut ei possessiones suas contra fidem bonam æger venderet, incivile factum præses Provinciæ coerceat, remque restitui jubeat. l. 3. ff. de var. et extraord. cognit.

Ea patitur (Archiatros) accipere, quæ sanis offerunt pro obsequiis, non ea quæ periclitantes pro salute promittunt. l. 9. C. de Profess. et Med.

#### XIII.

Since Physicians, Surgeons and Apothecaries have frequent Occasions in which the Secrets of sick Persons themselves, or of their Families, are discovered to them, whether it be out of a Confidence that they place in them, or because of the Conjunctions which render their Presence necessary at the time that they are speaking of Affairs, or doing other things which require Secrecy; it is one of their Duties not to abuse the Confidence that is put in them, and to keep exactly and faithfully the Secret of things that are come to their Knowledge, and which ought to be kept secret o.

o See on the 16th Article the End of Hippocrates's Oath.

This Secrecy is enjoined by an Article of the Statutes of the Faculty of Physick: *Ægrorum ar-*  
cana;

12. They ought not to exact any Composition for their Payment.

13. They ought to keep the Secrets of their Patients.

14. Physicians and Surgeons ought to transmit the Cases they have been.

*cana, visa, audita, intellecta, nemo eliminat.*  
*Art. 19. Appendix ad reformationem Facultatis*  
*Medicinae.*

## XIV.

14. *Physicians ought to be united among themselves in the Care of their Patients.*

Union among Persons of all sorts of Professions is a Duty incumbent on them: and altho in some Professions their Division may be useful to the Publick by the Advantages that may be drawn from the Discoveries and Improvements made in the Science by those who set up in opposition to one another, and from the Light which may be had by comparing different Sentiments; yet Disunion among Physicians who have the same Patients under their Care, or who are consulted about their Distempers, cannot but be of prejudice to the sick Persons, and is a breach of one of the most essential Duties of those who practise Physick; since it may lead them to be of opposite Sentiments merely out of a Spirit of Contradiction: and therefore it is, that to prevent this Inconvenience, and to oblige them to communicate reciprocally to one another their Skill and Knowledge, the Rules of their Profession enjoin them not only not to fall out among themselves, but even to be in strict Friendship with one another *p.*

*p. Scholæ Medicæ Doctores amicitiam inter se colant. Art. 13. appendix ad reformationem Facultatis Medicinae.*

*Speak not evil one of another, Brethren. He that speaketh evil of his Brother, and judgeth his Brother, speaketh evil of the Law, and judgeth the Law. James 4. 11.*

*Withhold not Good from them to whom it is due, when it is in the power of thine hand to do it. Prov. 3. 27.*

*And let none of you imagine Evil in your Hearts against his Neighbour. Zech. 8. 17.*

## XV.

15. *They ought to acquaint their Patients, or Relations, with the Danger of their Distemper.*

The Consequence of making known, either to the sick Persons themselves, or to the Pastors who have the Care of their Souls, the Danger in which they are, that they may give order about what is necessary to be done in that Condition for settling their spiritual and temporal Concerns, makes it also a Duty on Physicians and others who have sick Persons under Cure, to give notice of the Danger they may be in to the Persons who are the most proper to acquaint the sick Person himself with it *q.* And the same Reason which

*q. Cum infirmitas corporalis nonnunquam ex peccato proveniat, dicente domino languido quiesce sanaverat; Vale, & amplius noli peccare, ne deterius aliquid tibi contingat. Præseni decreto, sta-*

oblige Physicians to this Duty, obliges them also to prescribe no Remedy, the Use whereof may be contrary to the Spirit of Religion, and to good Manners.

*tuimus, & districte præcipimus medicis corporum, ut cum eos ad infirmos vocari contigerit, ipsos ante omnia moneant, & inducant, ut medicos advocent animarum: ut postquam fuerit infirmo de spirituali salute provisum, ad corporalis medicinae remedium salubrius procedatur: cum causa cessante, cesset effectus. Hoc quidem inter alia huic causam dedit edicto, quod quidam in ægritudine lecto jacentes cum eis a medicis suaderetur, ut de animarum salute disponant, in desperationis articulum incidunt: unde facilius mortis periculum incurrunt.*

*Si quis autem medicorum hujus nostræ constitutionis, postquam per Prælatos eorum fuerit publicata, transgressor extiterit, tamdiu ab ingressu Ecclesiæ arceatur, donec pro transgressione hujusmodi satisfecerit competenter.*

*Cæterum cum anima sit multo pretiosior corpore, sub interminatione anathematis prohibemus, ne quis medicorum pro corporali salute aliquid ægroto suadeat, quod in periculum animæ convertatur. Cap. 13. de pœnit. & remiss.*

## XVI.

Seeing it often happens to be necessary for Courts of Justice to have Information of the Condition of Persons, either sick or wounded, and of the Causes of their Distempers, or of their Wounds, they therefore oblige Physicians and Surgeons to make a Report to them of what they know of the Matter, and to make Oath that they will speak the Truth. This therefore is another of their Duties, to make faithful Reports on such occasions; as for example, if any one being obliged to appear in a Court of Justice happens to be under an Indisposition which hinders him from making his Appearance; if Information is given against Persons who have wounded or cruelly beaten him that complains; in these Cases, and others of the like nature, the Court directs the Physicians or Surgeons, or both together, who have already visited the sick Person, or who shall go and visit him by order of the Judge, to make their Report of the Condition of the Person, and of the Causes of his Illness *r.*

16. *They ought to be faithful in the Reports which they make in a Court of Justice touching the Condition of the Person.*

*r. Semel causaria missis militibus, infirmitas non solet concedi obtentu recuperatæ valetudinis melioris quando non temerè dimittantur, nisi quos constat medicis denuntiatis, & iudice competente diligenter examinante, vitium contraxisse. l. 6. de re milit.*

*Juramento affirmo, teste Apolline, medicorum præside, & Esculapio, Hygea ac Panacea, deabus disique omnibus me, quantum viribus & iudicio assequi possum, inviolatum hoc jurandum hancque stipulationem præstaturum.*



Sancte itaque promitto, me loco parentum habiturum hunc, qui me hanc artem docuit, nutriumque me ei præstiturum, & quibus eget benigne impertiturum, progeniem ejus, germanorum loco reputaturum: & hanc artem si discere ejus posterii voluerint, sine mercede & absque stipulatione me illos docturum. Præceptorum & narrationum, & reliquarum universarum artis benigne & fideliter participes facturum meos, & præceptoris mei liberos, imo & reliquos qui scripto stipulati fuere, ac ex lege medica jurjurandum interposuere: alium præter hos nullum. Cæterum in tractandis ægris, dicta, quantum viribus & ingenio assequar, ex ægrorum commodo utar: a veneno autem imbuta, & sanitati injuria illos arcebo. Nec unquam, aut prece aut præmio victus, pharmacum calamitosum propinabo cuiquam; nec nefarii hujus consilii auctor ero unquam. Ita nusquam ingravidatæ mulieri pessum abortiferum porrigam. Vitam artemque meam castè & sanctè ducam. Nec unquam ex calculo laborantes ipse secabo: sed his qui se totos huic operi dicarunt, hoc officium permittam. Quasvisque ingrediar ædes, in his ægrorum commodis studebo; studiosèque ulla injuria a me ne prudenter eveniat cavebo; & ab omni corruptela, cum alia, tum maxime venerea me continebo, sive corporibus scemineis, masculis, liberis aut servilibus medicinam fecero. Quæ autem inter curandum visu aut auditu notavero, vel extra medendi artem in communi hominum vita percepero, quæ non decet enunniare, silentio involvam, & tanquam arcana illa æstimabo. Itaque inviolatâ integritate, sanctè si hoc jurjurandum præstitero, nec fallo, eveniat mihi feliciter vita & hæc ars, atque perpetuo gloria mea toto splendeat orbe: sin perjurus fefellerò fidem, his vobis adversa eveniant omnia. *Jurjur. Hippocr.*

## XVII.

Of all the Professions that have relation to the Publick Order of the Society, and to the Service of particular Persons, there is none whose Functions are of a more universal Necessity for all sorts of Persons without exception, than that of Physicians and Surgeons, for Diseases, Wounds, Dislocations, and all the other different Distempers; which obligesthem to assist in the way of their Profession, as Occasion offers, as far as they are able, and for nothing, those who standing in need of

1. And he gave every Man Commandment concerning his Neighbour. Ecclus. 17. 12.

Archiatru scientes annonaria sibi commoda a populi commodis (ministrari) honeste obsequi tenuioribus malint, quam turpiter servire divitibus. l. 9. C. de Profess. & Med.

Honour a Physician with the Honour due unto him, for the Uses which you may have of him; for the Lord hath created him. For of the most High cometh Healing, and he shall receive Honour of the King. The Skill of the Physician shall lift up his Head, and in the sight of great Men he shall be in admiration. The Lord hath created Medicines out of the Earth, and he that is wise will not abhor them. Was not the Water made sweet with Wood, that the Virtue thereof might be known? And he hath given Men Skill, that he might be honoured in his marvellous Works. With such doeth he heal Men, and take away their Pains. Of such doeth the Apothecary make a Confection, and of his

their Help have not wherewithal to recompense them: And this Duty is more indispensibly incumbent on those who are settled where they are allowed Salaries, and other Advantages, to engage them to exercise their Profession there. For the Laws require that those Men should prefer their Duty of attending the Poor to the Profit they might make by serving the Rich.

Works there is no end, and from him is Peace over all the Earth. Ecclus. 38. 1, 2, &c.

Medicos, grammaticos & professores alios literarum immunes esse, cum rebus quas in civitatibus suis possident, præcipimus, & honoribus fungi, in jus etiam vocari eos, vel pati injuriam prohibemus: ita ut si quis eos vexaverit, centum millium nummorum ærario inferat a magistratibus. mercedes etiam eorum & salaria reddi præcipimus. Quoniam gravissimis dignitatibus, vel parentis, vel domini, vel tutores esse non debent, fungi eos honoribus volentes permittimus, invitos non cogimus. l. 1. C. Theod. de Med. & Profess.

## XVIII.

Seeing we explain in this Section the Duties not only of the Professors in the Universities, Colleges and Academies; but likewise of those who teach in private, which takes in the Masters of private Schools, and all those who are any way concerned in the Instruction of Youth, both of the one and the other Sex, we may add here as to the said Persons, that their Duties are the same with those of Professors in the Universities, in so far as they are applicable to them in their Stations, and especially in what concerns the Care of the Manners of those whom they instruct; as has been explained in the fourth Article u.

u Ad docendam & regendam juventutem magistros probatæ vitæ & doctrinæ recipiant, qui suo munere recte fungi noverint: quorum mores in primis spectandi, ut pueri ab his, & literas simul discant, & bonis moribus imbuantur. Statutes of the Faculty, Art. 1.

Foolishness is bound in the Heart of a Child; but the Rod of Correction shall drive it far from him. Prov. 22. 15.

Withhold not Correction from the Child; for if thou beatest him with the Rod, he shall not die. Thou shalt beat him with the Rod, and shalt deliver his Soul from Hell. Prov. 23. 13, 14.

My Son, gather Instruction from thy Youth up; so shalt thou find Wisdom in thine old Age. Ecclus. 6. 18.

My Son, hearken unto me, and learn Knowledge, and mark my Words with thy Heart. I will shew forth Doctrine in Weight, and declare his Knowledge exactly. The Works of the Lord are done in Judgment from the beginning; and from the time he made them, he disposed the Parts thereof. He garnished his Works forever, and in his hand are the chief of them unto all Generations; they neither labour, nor are weary, nor cease from their Works. Ecclus. 16. 24, 25, &c.

17. They ought to serve the Poor gratis.

18. The Duty of private Tutors and Preceptors.

*Bring them up in the Nurture and Admonition of the Lord. Ephes. 6. 4.*

*See Deuter. 11. 19. and Psal. 24. 4. 5.*

Cum omnium regnorum & populorum felicitas, tum maxime reipublicæ christianæ salus, a recta juventutis institutione pendeat, quæ quidem rudes adhuc animos ad humanitatem flectit; steriles aliquin & infructuosos, reipublicæ munus idoneos & utiles reddit; Dei cultum, in parentes & patriam pietatem, erga magistratus reverentiam & obedientiam promoveret. *Art. 1. of the Statutes of the Faculty of Arts.*



## T I T. XVIII.

### Of Hospitals.

**T**HE erecting of Hospitals is equally agreeable to the Spirit of Religion, and to the Order of Temporal Government; for they are useful with respect to the one and to the other.\*

Religion obliges us to exercise towards the Poor the double Charity of relieving them in their Wants, and of rescuing them out of the Temptations to Vice, which is the Consequence of Poverty; and this Duty, which is common to all Persons who are in a condition to assist the Poor, is more especially natural unto Princes: But with respect to Princes, this Duty is not limited to the Relief of those poor Persons in particular whose Necessities they may chance to hear of; for there are but few who are able to approach them: but their Charity ought to extend to all Persons, and make provision in general for the Relief of their Necessities by all possible ways, in proportion to the means they have of doing it by their Sovereign Authority, and the Greatness of their Revenue *a*. It is owing to this pious Use which the great St. Lewis made of those two Appendages of the Sovereigns, that there are in the Kingdom of France divers Hos-

*a* Provinciales egestate victus atque alimonie inopia laborantes liberos suos vendere vel obpignorare cogovimus. Quisquis igitur hujusmodi reperietur qui nulla rei familiaris substantia cultus est, quique liberos suos ægre ac difficile sustentet: per fidei nostrum antequam fiat calamitati obnoxius, adjuvetur: ita, ut proconsules, præfidesque & rationales per universam Africam habeant potestatem, & universis quos adverterint, in egestate miserabili constitutos, siipem necessariam largiantur: atque ex horreis substantiam proximis tribuant competentem. Abhorret enim nostris moribus, ut quemquam fame confici vel ad indignum facinus promereri concedamus. *Cod. Theod. de alimentis qua in op. par. de publ. par. lib.*

pitals of his Foundation; and many other Kings, both before and since him, have made many such like Establishments.

It is easy to judge of the Usefulness of Hospitals in what concerns Religion; seeing those Houses are Sanctuaries, in which the Poor being provided with the Necessaries of Life, and with Christian Instruction, are not only out of the Temptations to Vice, but in a condition to apply themselves wholly to the great Concern of all Men, which is the Salvation of their Souls.

The Temporal Government hath also its Advantage in the erecting of Hospitals, in that they are a Receptacle for those who are reduced to the Necessity of wandering about to beg their Bread, and who for want of Employment are obliged to spend their time in Idleness, which multiplies Thefts, Robberies, and Murders. And Hospitals, especially those which are called general Hospitals, have further this Usefulness both with respect to Religion and to the Civil Government, that the Alms are more usefully employ'd, that the Poor are better looked after than they can be in any other Places in which their Poverty may allow them to take Retreat, and that being by this means prevented from wandering about the Country, they are much less burdensome to the Publick *b*.

We may add to these

*b* Cunctis quos in publicam pauperum mendicias vocaverit, inspectis, et cum his & integritas corporum, & ut in quibusque itineribus & abique ulla deinde necessitas inferatur, ut eorum a se non condictio servilis proditor fluitante & diligenter minimum consequatur: eorum vero quælibet sola libertas persequitur. eorumque per quos quisque hujusmodi sententiam penderet, probaverit. *l. un. c. de mund. va.*

Si vero hujus terræ fuerint, & corporibus quidem validis utantur, vitæ autem eis delens non est occasio: hos non frustra esse terræ onus permittere, sed tradere citius eos operum publicorum atque artificibus, ad ministerium, & præpositis pacificantium stationum, & horum operantibus, aliisque diversis artibus, aut operibus in quibus valet simul quidem laborare, simul autem alii: & seque iam ad meliorem mutare vitam. Si vero aliqui noluerint observare operibus quibus traditi sunt, hos sectari hac regia civitate. Parentes enim eis, hoc sanctum, an non seque eos ad illicitos actus impellente, leges eos adstringant ad poenas, nostris tradentes iudiciis. Laesos autem aut laesos corpore, aut senio graves, hos sine molestia esse jubemus in hac nostra civitate, aut pie agere volentibus adscribendos: & aliorum singulos interrogare qua venerint gratia: & inquisitis, quæ digna sint super eis agere, ut non pigri hic fideant, sed competentia agerent, ad proprias revertantur provincias. *Nov. 80. c. 1. l. sup. 4. vol.*

derations touching the Usefulness of Hospitals, both to Religion and to Civil Government, that they have been necessary on the account of another Advantage which is common to the one and to the other.

Every Body knows that God hath placed all Men in a Society which makes a Body, of which every one is a Member; from whence it follows, that all the Goods being destined by his Providence to supply their Wants, it is for the good of Religion and of the Temporal Government of every State, that each Member thereof should have what is necessary for his Subsistence. For altho all the Goods be not common to all Men, and that a Community of Goods among all Men be neither just nor possible, as has been observed in the Preface to the Second Part of the *Civil Law in its Natural Order*; yet it is always just and necessary that every one should have some share in Goods which are destined for the Use of all, and that no body should be excluded from having out of them at least what is necessary for Habitation, Food and Raiment; that all Persons may be in the Condition of Members of the Body of the Society, and that they may be able to subsist under the Ties which Society demands, and which are more especially necessary for the different Duties of Religion.

But since Poverty puts those who are reduced to it under an Incapacity of those Ties and Engagements, and renders it impracticable for them to perform those Duties, if others do not help them out of that State; there are only two Ways to provide against it: one is to take the Poor into Hospitals; and the other is the Assistance which all the particular Persons who are in a condition to relieve their Wants ought to give them.

By the Establishment of Hospitals we put those who are received into them into a Capacity of those Ties and Engagements which Religion demands, and in a Condition of performing the Duties of it to which they are bound. But because it is not possible that all the Poor should be received into Hospitals, either because there are not Hospitals sufficient to contain them all, or because many are excluded out of them by reason of several Obstacles; the same divine Providence, which hath formed the Society of Mankind, and which

hath laid the natural Foundation of it in the Union which Religion ought to establish among them, makes that they being all of them Members of one and the same Body, are by consequence Members one of another; and that therefore every Man is to every other Man his Neighbour. So that as every Member of the Body hath its Use for every one of the other Members, according as its Functions may have relation to them; so is every Man engaged towards every other Man in Duties which the Conjunctures may demand: and this Engagement having for its Principle an Union among all Men, like to that of the Members of one Body; every Man has for the Rule of his Duties towards others, that which he owes unto himself, as every Member of the Body exercises its Functions in behalf of the other Members, in the same manner as it exercises them for its own Use; and if the Good of the Body requires that one Member should expose it self to save another, nothing restrains it, nothing hinders it from performing that Function: so in the same manner Men owe reciprocally to one another mutual Assistance in all their Wants, as far as they are able; and they ought, even as occasion offers, to prefer the essential Good of others to their own proper Good, which is of another nature, and of less importance, according to the Rules of Religion, of which it is not necessary to speak here. But we could not omit mentioning here that which is still wanting in the Establishment of Hospitals for the Relief of the Poor; for since those Houses cannot possibly contain all the Poor, and that even the greatest part of Hospitals have not a sufficient Fund of Revenue by their Foundation, the Duty of contributing to the Relief of the Poor, whether it be of those who are in the Hospitals, or of all the other Poor, will never cease, according to the Word of God, which teaches us, that we have always the Poor with us. So that all the Relief which the Poor can receive in Hospitals, does not discharge any Person from the Duty of assisting them.

It

*c* For as we have many Members in one Body, and all Members have not the same Office, so we being many are one Body in Christ, and every one Members one of another. Rom. (2. 4, 5.

*For we are Members one of another. Eph. 4. 25.*

*d* See Luke 10. 29.

*e* For ye have the Poor always with you. Mat. 26. 11.

Beware

It follows from these Principles, that those who are in want of things absolutely necessary for Life, and who are out of a condition of acquiring them by their Labour, have a Title and a natural Right which appropriates to them such a Share as is necessary for their Wants out of the Goods which God has given unto others; and seeing it is not lawful for them to take this Share unless it is given them, it is an indispensable Obligation on those who are able to relieve the Poor, to give them of the said Share which they have a right to, so much of it as is in their hands, and to acquit themselves of this Duty *f*.

Since Hospitals are founded with an intent to relieve the Necessities of the Poor, and that their Necessities are of many sorts, there are therefore erected different sorts of Hospitals. Some are for receiving sick Persons *g*, who labour under Diseases which are curable,

*Beware that there be not a Thought in thy wicked Heart, saying, The seventh Year, the Year of Release is at hand, and thine Eye be evil against thy poor Brother, and thou givest him nought, and he cry unto the Lord against thee, and it be Sin unto thee. Thou shalt surely give him, and thy Heart shall not be grieved when thou givest unto him: because that for this thing the Lord thy God shall bless thee in all thy Works, and in all that thou puttest thy Hand unto. For the Poor shall never cease out of the Land; therefore I command thee, saying, Thou shalt open thine Hand wide unto thy Brother, to thy Poor, and to thy Needy, in thy Land. Deuter. 15. 9, 10, 11.*

*Save when there shall be no Poor among you; for the Lord shall greatly bless thee in the Land which the Lord thy God giveth thee for an Inheritance to possess it. Deuter. 15. 4.*

*He that giveth unto the Poor shall not lack; but he that hideth his Eyes shall have many a Curse. Prov. 28. 27.*

*f And six Years shalt thou sow thy Land, and shalt gather in the Fruits thereof; but the seventh Year thou shalt let it rest, and lie still, that the Poor of thy People may eat, and what they leave the Beasts of the Field shall eat. In like manner thou shalt deal with thy Vineyard and with thy Olive-Yard. Exod. 23. 10, 11.*

*If there be among you a poor Man of one of thy Brethren within any of thy Gates in thy Land which the Lord thy God giveth thee, thou shalt not harden thy Heart, nor shut thine Hand for thy poor Brother; but shalt open thine Hand wide unto him, and shalt surely lend him sufficient for his Need, in that which he wanteth. Deut. 15. 7, 8.*

*Give Alms of thy Substance, and when thou givest Alms let not thine Eye be envious, neither turn thy Face from any Poor, and the Face of God shall not be turned away from thee. Tob. 4. 7.*

*See 1 Sam. 2. 7.*

*He that oppresseth the Poor, reproacheth his Maker; but he that honoureth him, hath Mercy on the Poor. Prov. 14. 31.*

*He that hath Pity upon the Poor lendeth unto the Lord, and that which he hath given will he pay him again. Prov. 19. 17.*

*g Nosocomia. l. 19. C. de Sacr. Eccl.*

and those are for every poor Man or Woman only for a certain time; others are for Diseases that are incurable: there are some for Foundlings, for Orphans *h*, and for other sorts of Children *i*, till they arrive at a certain Age, for Maids, for Widows, for old Men *l*, for Passengers *m*, and for other sorts of Poor *n*. For as the Causes of Poverty are infinite, it extends it self many ways to all sorts of Ages and Conditions of both Sexes.

It is by the Variety of these Hospitals that Endeavours have been used to provide, as much as was possible, for the different sorts of Poor; but it was not possible to have Hospitals enough to receive all the Poor in general: for besides that there are many Places where they are not able to build Hospitals, it appears sufficiently that even in those Places where there are Hospitals of several sorts, they are not sufficient for all the Poor. Thus there are Persons of good Condition who are to be assisted out of Hospitals. Thus a Husband and a Wife having a great many Children, and who may be able by their Labour to provide a Part of the Necessaries for their Family, ought not to be taken from their Families, to be put into an Hospital, but they ought to be assisted in their Houses. Thus there are Diseases of which People cannot be conveniently cured in Hospitals; and many other Obstacles exclude several Persons from being received into them.

Since Hospitals are founded with a View to promote Religion, and to serve the State, and that they have their Use both in the one and in the other, as has been already explained; it is essential to all Foundations of Hospitals, that the Poor be there assisted with what they stand in need of both for their Spiritual and Temporal Concerns. And it is for this reason that this Order hath been established in almost all Hospitals, that for the spiritual Affairs there should be Churches or Chappels, and Churchmen appointed to administer the Sacraments there, to instruct the Poor, and to exercise towards them all the other Functions of their Ministry; and for their Temporal Concerns, that there should be sufficient Room and convenient Lodging for the Poor, according to their number, and as the

*h Orphanotrophia. d. l.*

*i Brephotrophia. d. l.*

*l Gerontocomia. d. l.*

*m Xenodochia. d. l.*

*n Prochorophia. d. l.*

Apart;

Apartments ought to be disposed for their Use, whether it, be for the Distinction of Sexes, or for employing them in some Work in the Hospitals which are designed for receiving the Poor that are able to work. There ought also to be in them convenient Lodging for the Persons who are appointed to supply the Spiritual Functions, and to assist the Poor in their Temporal Concerns; and to the end that those Houses may be maintain'd in the good Order in which they ought to be, there should be some Revenues allotted to them, and they ought to have standing Regulations and Orders, both for the Functions of the Persons appointed to assist and attend the Poor in their spiritual and temporal Necessities, as also for the Duties of the Poor: And in order to have the said Regulations punctually observed, to have the Oeconomy of the House well looked after, and care taken of the receiving and disbursing of the Revenues belonging to the Hospitals, there is occasion for Governours and Overseers, who may divide among them the Functions necessary for the Administration and Oeconomy of the Hospitals.

It follows from this Usefulness of Hospitals, both to Religion, and to the State, that they ought always to remain the same, as the Necessities for which they are established never cease, and consequently that their Goods ought to be inalienable, as much or rather more than those belonging to Communities.

• Jubeamus, nulli posthac Archiepiscopo in hac urbe regia sacrosanctæ orthodoxæ Ecclesiæ prædenti nulli œconomo, cui res Ecclesiastica gubernanda mandatum, esse facultatem, fundos vel prædia, sive urbana sive rustica, res postremo immobiles aut in his prædiis, colonos, vel mancipia constituta, aut annonas civiles, cujuscunque suprema vel superstitis voluntate, ad religiosas ecclesias devolutas, sub cujuscunque alienationis specie, ad quancunque transferri personam. Sed ea etiam prædia dividere quidem, colere, augere, & ampliare: nec ulli eisdem prædiis audere cedere verum, sive testamento quocunque jure facto, seu codicillo vel sola nuncupatione legato, seu fideicommissio, aut mortis causa donatione, aut alio quocunque ultimo a birrio, aut certe inter viventes habita largitate, sive contractu, venditionis sive donationis, aut alio quocunque titulo quisquam ad præfatam venerabilem ecclesiam patrimonium suum, partemque certam patrimonii in fundis, prædiis, sive domibus, vel annonis, mancipiis, & colonis, eorumque peculius voluerit pertinere: inconcussa ea omnia sine ulla penitus immutatione conserventur. Sciens nullus sibi occasione, vel tempore, ad vicissitudinem beneficii collocati aut gratiæ referendæ, donandi; vel certe hominibus volentibus emere, alienandi aliquam facultatem permissam: nec si omnes cum religioso epis-

We may also consider Hospitals as being a kind of Communities *p*, but of a Character different from the others. For whereas all other Communities are composed of Persons who form a Body, of which every one is a Member, and out of which he cannot be excluded without some just Cause, as for some Offence, and in which he has his Share in the Rights and Privileges belonging to the whole Body, and may be named to serve Offices therein, Hospitals on the contrary are Communities in which the Poor, for whose behoof they are established, have no other share besides the Use of the Favour which is done them by receiving them into the Hospital, and they may be excluded from it; and as for the Administration of the Revenues, of the Rights, and of the Affairs of the Hospital, they cannot be employed therein. For this Administration is not committed to the Poor who are in the said Houses; but is placed in the hands of other Persons, such as the Magistrates and Burgeses of Towns, and others, according to the Nature and Foundations of the several Hospitals. And there are some Hospitals which are regular Communities of Men or Women, who make profession to serve the Poor out of their own Goods, or those of the Foundation, or out of other Goods put into their hands for that purpose. And in this kind of Hospitals the Administration of the Goods, and the Affairs thereof, and the Direction of the manner of serving the Poor, is in the hands of the Superiors of the said Communities, unless the said Houses had been established in such a manner as that the Monks or Nuns were to have their Community apart to themselves, and were to serve the Poor out of the Revenues of the Hospitals, which were to be managed by other Persons. But there is this belongs in common to all sorts of Hospitals, that as to their Goods, their Rights, their Affairs, they are consider'd as Communities which are in the

copo & œconomo clerici in earum possessionum alienationem consentiant; ea enim quæ ad beatissimæ ecclesiæ iura pertinent, vel posthac pervenerint, tanquam ipsam sacrosanctam & religiosam ecclesiam intacta convenit venerabiliter custodiri: ut sicut ipsa religionis & fidei mater perpetua est; ita ejus patrimonium jugiter servetur illæsum. l. 14. c. de sacrosanct. Eccl.

• Id quod pauperibus testamento vel codicillis relinquitur, non ut incertis personis relictum evanescat, sed omnibus modis ratum firmumque constet. l. 24. c. de Episc. & Cler.

place

place of Persons, and which may acquire and possess Goods, and sue in Courts of Justice; so that they are as it were Persons represented by those who have the Government and Administration of them, as has been explained in the *Civil Law in its Natural Order* q.

It follows from all that has been said in relation to Hospitals, that the subject matter of this Title may be reduced to two Parts, which shall be explained in two Sections. The first, of that which relates to the Government of Hospitals; the second of the Functions and Duties of those who have the Government or Administration of them.

q Id quod pauperibus testamento vel codicillis relinquitur, non ut incertis personis relictum evanescat, sed omnibus modis rati firmumque consistat. l. 24. eod. de Episc. & Cler.

Sed etsi pauperes quidem scripserit heredes, & non inveniatur certum prochoropium, vel certæ ecclesiæ pauperes de quibus testator cogitaverit: sed sub incerto vocabulo pauperes fuerint heredes institui: simili modo & huiusmodi institutionem valere decernimus. l. 49. §. eod.

Nulli licere decernimus, siue testamento hæres sit institutus, siue ab intestato succedat, siue fideicommissarius vel legatarius invenitur, dispositiones per testamenti infringere, vel improba mente violare, addeundo incertum esse legatum vel fideicommissum, quod redemptioni captivorum relinquitur: sed modis omnibus exactum, pro voluntate testatoris, pie rei negotio proficere. l. 28. eod.

See the 15th Article of the 2d Section of Persons, in the *Civil Law in its Natural Order*.

ed only for the Poor that are to be employed at work a.

a Every Hospital hath its Use regulated by its Establishment and Foundation.

## II.

Seeing the End for which Hospitals are founded, is that the Poor may be there subsisted, and that they may be there kept in good Order, it is part of the Government of every Hospital, to have Orders and Regulations suited to their different Uses, whether they be intended for the relief of the Sick or of the Whole; to have in every one of them the Helps that are necessary to the Poor for their spiritual and temporal Concerns; to have Overseers appointed to take care of the Functions both of the one and of the other b.

b Since Hospitals are founded for a Publick Good, and for the Interest both of Religion and of the State, they ought to be regulated in such a manner as that the Poor may be assisted both in their spiritual and temporal Wants.

## III.

Hospitals having their own proper Goods, their Rights, their Affairs, their Privileges c, it is necessary for the good Government of those Houses, that the management of all their Affairs be put into the hands of Persons who may take care of them; and the same Order of Government requires also that there should be some Body appointed to gather in the Revenues of the Hospital, and to receive the Alms that are given to it, and that the said Person be able to find sufficient Security for his Administration.

c The Ordinances of France have made provision for this Administration of Government of Hospitals, and the Nomination of the Persons who are to be charged therewith, and to take care of their Affairs, and of their Privileges.

Sancimus res ad venerabiles ecclesiās, vel xenones, vel monasteria, vel orphanotrophia, vel gerontocomia, vel prochorotrophia, vel nosocomia, vel brephotrophia, vel denique ad aliud tale consortium descendentes, ex qualicunque liberalitate, siue inter vivos, siue mortis causa, siue in ultimis voluntatibus habita, a lucrativorum inscriptionibus liberas immunesque esse, lege scilicet quæ super huiusmodi inscriptionibus posita est, in aliis quidem personis suum robur obinens. l. 22. C. de sacros. Egl.

## IV.

The Fund of the Revenues belonging to the Hospital, and of the Alms given to it, being set apart for the different necessary Expenses in Hospitals, whether it be for the Persons of the Poor, or for the Salaries and Maintenance

## SECT. I.

### Of the Government of Hospitals.

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3. Governours of Hospitals.
4. Regulation for the Expenses of Hospitals.
5. Nomination of the Governours.

## I.

1. Divers Uses of Hospitals.

THE first Rule of the Government of Hospitals, is to make them serve for the Use to which they are destined, and to receive in them only the Poor for whom they are established. Thus, in Hospitals that are founded for sick Persons, they do not receive any Poor that are strong and well in health; nor do they admit sick Persons into Hospitals which are found-

4. Regulation for the Expenses of Hospitals.