JURISDICTION

IN THE

CONFESSIONAL.

A PAPER READ IN SUBSTANCE BEFORE

THE SOCIETY OF THE HOLY CROSS,

At the September Synod, 1872.

BY THE REV.

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E. G. W.

CAMBRIDGE,
Feast of the Holy Name, 1873.

JURISDICTION IN THE CONFESSIONAL.

DEAR MASTER AND BRETHREN,

The question on which I have, at the request of a recent Chapter, to address the Synod to-day is one which has been mooted before. It formed the subject of a considerable controversy in the year 1849. Messrs. Dodsworth, Allies, and Maskell addressed a joint letter to Dr. Pusey, inviting him to state his opinion as to the Jurisdiction required by a priest in order that he might rightly exercise the office of a Confessor. The statements contained in that letter, and others subsequently published, went to the impugning of the practice of many priests at that period, and notably that of Dr. Pusey himself. The reply made by Dr. Pusey was a volume, in the form of a letter to Mr. Upton Richards, entitled, "The Church of England leaves her Children free to whom to open their griefs." That volume I need scarcely say is characterised by all Dr. Pusey's usual exuberant and diffuse learning. Many of the Society are of course acquainted with this reply, and it may therefore perhaps appear at once somewhat needless and somewhat presumptuous that I should enter on a discussion, however brief, of the same topic. My justification must be twofold. First, as a matter of fact, there appears at the present time to be a variety in practice, and a considerable diversity of opinion, on this matter. If the Society can in any degree lessen this diversity, it is clearly most desirable that it should do so. Secondly, I venture to think that though Dr. Pusey's book is most exhaustive and conclusive on one point of the controversy, it does not seem to be equally

so on another. What those two points are I will state directly. It is on the latter of them that I have to address you.

The general question may be stated thus—Is it necessary that a priest should possess any power or authority other than that given to him in ordination, in order that he may rightly—that is, validly as well as licitly—absolve any penitent who may come to him? This general question involves two others. First, as regards the penitent—May he make his confession to any priest he chooses? If he may not do so, it of course follows, è converso, that not every priest may absolve. The second question is as regards the priest himself, independently of the penitent. That is, assuming that penitents may go to any priest duly qualified and be rightly absolved, or, in other words, assuming that, in foro pœnitentiæ, the penitent has no Superior appointed for him, but is permitted to submit himself to whom he will, what then is the nature of that qualification? Who is a duly qualified priest? Now it is the first of these questions—that, namely, which regards the penitent—that I conceive Dr. Pusey has most conclusively answered. He has shown that in the Anglican obedience (I use an indefinite term to express an indefinite thing) there is no such person as the "proprius sacerdos" of the Lateran Council, as strictly understood—that is, that penitents are not bound to confess to their Parish Priest, or to any particular priests, but that when the needs of the conscience require, they are at liberty to go to any duly qualified priest, or "discreet and learned minister" as the exhortation expresses it. Less than this, indeed, could not well be deduced from that exhortation. But Dr. Pusey goes further; and from the fact of the freedom he has thus indicated he draws, or seems to draw, the conclusion that therefore every priest is with us duly qualified, or a "discreet and learned minister"; and consequently that any priest may, at any time and place where he may choose, receive all penitents who may come to him, and may duly absolve them. Now this conclusion, which, whether Dr. Pusey really intended it or not, has been very generally inferred from his book, appears to me not only to be wider than the premises, but to be opposed to the principles as well as the enactments of Canon Law. The opinion, which is somewhat widely prevalent, is that every power and authority required for the due administration of the Sacrament of

Penance is conferred in ordination; so that, as the newly-ordained priest rises from his knees, the "Accipe Spiritum Sanctum" just pronounced, he is that moment a duly qualified confessor for every soul within the Anglican obedience—the words of ordination make him, ipso facto, a "discreet and learned minister." If this proposition be true, it appears to me that it would be difficult to point to a more thorough state of ecclesiastical anarchy than it would seem to indicate. To justify this opinion I must ask you to allow me to re-state certain well-known principles of Canon Law.

The question before us is a question of jurisdiction—the right juris dicendi. For, as Catholic Theology in opposition to various Protestant methods teaches us, the priest, when acting as confessor, occupies the position of a judge; and this by virtue of the potestas ligandi et solvendi. Now the idea of Jurisdiction is one which is based on the more fundamental one of Government, or, in canonical language, of Hierarchy. By the term Hierarchy is meant to be expressed the form with which our LORD endowed the Church with sovereignty. It is the expression of the sum total of the powers of the Church. Or, as Devotus [*Inst. Jur. Can.* I. 75] defines it, "Hierarchia apte definitur potestas a Christo suis Apostolis eorumque legitimis successoribus tributa ut Ecclesiam *regant* et divina religionis mysteria in ea *celebrent*." And so the Pseudo-Dionysius [*De Cœlesti Hierarchia*, c. iii. tom. i. p. 41, ed. Antw. 1634.]

Now Hierarchy is twofold. There is first the Hierarchy of Order, and secondly the Hierarchy of Jurisdiction. The distinction is a fundamental one in Canon Law, and in fact by far the greater part of that law is based upon it. It is one therefore which is universally recognised by the Canonists and admitted by the Theologians. S. Thomas [2 2æ, 39. 3] thus defines it, "Duplex est spiritualis potestas una quidem sacramentalis alia jurisdictionalis." Using philosophical terms, Order is δύναμις, Jurisdiction is ἐνέργεια. CHRIST gave the former to His Church, that she might have the possibility of spiritual goods. He gave the latter that she might have those spiritual goods rightly administered. The distinction is no mere subtlety. It is a real, and not simply a mental distinction. Very little consideration will indeed suffice to show the necessary and practical character of it. If the law-

fulness and validity of priestly acts depended only upon the power of order, how would schismatically ordained priests differ from catholic priests? They do differ, because, though both have order, the latter only can have jurisdiction. So again, the distinction between Metropolitans and their Comprovincials, so far as it is more than one of honour, is of course founded on difference in jurisdiction. It is necessary to insist on this point, because some, while admitting the formal distinction between order and jurisdiction, seem to think that it is only convenient and theoretical, and may be safely disregarded in practice. That, in fact, jurisdiction, though different from order, is yet conveyed at the same time and by one and the same action; so that every validly ordained priest has jurisdiction as well as order. Such an opinion, as I hope to show, is entirely opposed to the teaching of the approved Doctors of the Church, and is fraught with most serious consequences, and is liable to produce grave dangers and disorders. To multiply authorities would be simply to quote every Canonist who has ever written. Thus Barbosa [*Jur. Eccles.* I. i. 32] says, "Jurisdiction is not necessarily joined to order by consecration." And Devotus [*Inst. Jur. Can.* I. 85] says, "Potestas hæc, quæ jurisdictionis dicitur, aut regiminis, non ita cohæret ordinis potestati ut ab ea sejungi non possit." And S. Thomas [In 4 *Sent.* 17. 3. 2] "Ad effectum aliquem duo requiruntur potentia activa in agente et materia debita in suscipiente. Ideo ad effectum ligandi et solvendi requiritur et potestas clavium quæ datur in ordine et materia debita, sc. subditus qui habetur ex jurisdictione. Unde oportet confiteri sacerdoti et non nisi proprio. Sed proprius sacerdos duplex est. Vel ex jurisdictione ordinaria sicut parochialis sacerdos, vel episcopus, vel papa; vel ex jurisdictione delegata, sicut ille cui committet potestatem audiendi aliquis horum trium."

Jurisdiction then is a power distinct from and supplementary to Order. The power of Order comes direct from God; as the intervention of the Minister of the Sacrament of Order is strictly ministerial or mechanical. It is otherwise with Jurisdiction. God is of course the Sole Fount of Jurisdiction; but He has lodged this power in the bosom of the Church, and from her, by the individual acts of her rulers, it is given to those who are qualified to receive it; it is an

essential part of the gift of sovereignty. Order, being an immediate gift of God, is immutable or indelible. Jurisdiction, on the other hand, is mutable, and dependent upon conditions themselves the subject of human ecclesiastical law.

Jurisdiction is thus defined by Reiffenstuel [*Jus. Canon. Univ.* I. 29. 3] "Jurisdictio est potestas publica juris dicendi." This is of course the most general and formal definition. He more explicitly defines it when [*n.* 5] distinguishing between jurisdiction passive, or the capacity for exercising jurisdiction, and jurisdiction active, which alone is properly called jurisdiction, he describes it as the "facultas et potentia exercendi [auctoritatis]." Ferraris *s. v.* gives this definition, "Jurisdictio definitur quod sit facultas alicujus habentis publicam auctoritatem et eminentiam super alios ad eorum regimen et gubernationem." Refering once again to Dr. Pusey's book, it would seem that the definition or description which he gives [p. 23] cannot be accepted as sufficient or accurate. He says that jurisdiction is an authority vested in each priest, which he may exercise whensoever any, according to the law of the Church, submits himself to it; and secondly, that it is an authority over certain individuals given to a certain priest. Dr. Pusey appears to rely on the statement of De Palude: "In that way in which authority is in man, it is equally in every priest; but the Superior gives him the matter but no power, except when he ordains him." What De Palude says is just what Reiffenstuel says—that we must distinguish that which may improperly be called jurisdiction, which is rather a capacity, from jurisdiction proper. Dr. Pusey's statement seems at once too wide and too narrow. It is too wide, because it attributes jurisdiction proper to every priest; it is too narrow, because it does not express the limitation of jurisdiction except in one particular way; it is imperfect, because it mingles with the general definition the particulars of a special case. As we have seen, the more general and accurate description is—Jurisdiction is the faculty or power of exercising, using, and putting into activity a power or authority already bestowed, and is necessary for the licit, and in some cases valid, exercise of such power or authority.

Jurisdiction is either in foro externo, or in foro conscientiæ. It is of the latter kind that we are now concerned. All

jurisdiction may be further divided into ordinary and delegated. How these two classes, and more especially the latter, may be acquired, is the point to which I have to ask your attention. But before doing so I may just advert to two opinions which have been entertained on the previous question, viz., as to whether jurisdiction is necessary to the right exercise of the confessor's office. One is that, though without proper jurisdiction a priest would be guilty of irregularity in giving Absolution, yet that the Absolution so given is valid though illicit. The argument in support of this opinion is drawn from the analogy of the other Sacraments. In regard to them it is of course true (not even excepting Matrimony, if we exclude the decree *Tametsi* of the Tridentine Canon Law) that the Sacrament is valid though illicit. Suarez [In 3. *D. Tho. Disp.* 24. sec. 2] thus speaks of the opinion, "Inter Catholicos quidem dixerunt omnes sacerdotes ex vi suæ ordinationis et divini juris esse sufficientes ministros hujus sacramenti; ita ut quamvis possit ecclesia prohibere aliquibus sacerdotibus ne hoc sacramentum ministrent non tamen possit efficere quin eorum absolutio sit valida." But he demonstrates how entirely baseless is this opinion, and how completely void of authority it is. It is founded, in fact, on a false analogy. Jurisdiction in the case of the Sacrament of Penance is of the essence of the Sacrament, but it is not so in the case of the others. The point is not simply that the Church has power to *restrain* priests, either by general positive law or by the action of her executive, from the exercise of their functions in Absolution; or in other words, that they have jurisdiction until she takes it way: but that until the Church *gives* to priests something more than they have through the power of Order, they not only are restrained from the exercise of these functions, but are absolutely powerless. The position is one not of restraint, which implies the possession of power, but of defect, implying its absence; and the action of the Church or her executive is positive, not negative.

The other opinion is that jurisdiction is only required when the penitent is compelled by positive law to make his confession. In such case, it is argued, the priest must have such jurisdiction as will make him *the* priest to whom the law refers, otherwise the obligation of the law would not be

fulfilled by the penitent. But if the confession be a purely voluntary act on the part of the penitent, or at least an act to which he is impelled only by conscience, and his belief as to what the Church teaches to be the Divine law, then, it is argued, no jurisdiction is required; because the jurisdiction given by external means, either à jure or personaliter, is correlative and commensurate with external positive human law only. But a voluntary confession not being made under such law, it follows that the correlative jurisdiction is not required. And hence it is argued that, in respect to the Anglican obedience, no such jurisdiction is required. That is of course assuming the position as to confession so often now taken by Anglican writers, but to which I do not desire to pledge myself. This very opinion had found some supporters in the Roman obedience. Suarez thus reports the opinion, which you will observe is substantially identical with that which I have just sketched [*ubi sup. n.* 2]. "Alii tandem distinctione usi sunt de confessione non necessitate sed voluntaria facta." That is, that jurisdiction was required for the confession *ex præcepto* made once a year in accordance with the Lateran Canon *Omnis utriusque sexus*, but not for other confessions. But he refutes this, saying, "Hæc autem sententia non minus est falsa quam precedens quia necessitas jurisdictionis in ministro hujus sacramenti non est ex præcepto ecclesiæ sed ex intrinseca ratione, et institutione hujus sacramenti per modum judicii." That is, that the need of jurisdiction arises not from any positive enactment, but from the very nature of the Sacrament itself. And so [*n.* 7] he further argues that absolution pronounced without jurisdiction is not only irregular but void, for "In aliis [sacramentis] quamtumvis ecclesia removeat ministrum a sacro ministerio alicujus sacramenti, nihilominus sacramentum ab illo datum validum est, licet ille peccet in ministrando quia nulla conditio sublata fuit necessaria ad sacramentum; in hoc autem sacramento, si ecclesia *non concedat*, vel auferat jurisdictionem et hoc modo [that is, either by want of concession or by deprivation] prohibeat ministerium, non solum peccat sacerdos qui tentat absolvere, sed etiam nihil facit. Et ratio est quia illa non est tantum prohibitio, sed etiam *ablatio* alicujus conditionis seu potestatis necessariæ in ministro ad valorem talis actus, quam potestatem nos diximus esse jurisdictionem."

On the general question Suarez [*n.* 5] says, "Dicendum ergo est per se loquendo non omnes sacerdotes ecclesiæ esse sufficientes ministros ad conficiendum valide hoc sacramentum, per se ob defectum alicujus rei necessariæ ex parte ministri." And he adds "Hæc assertio est communis theologorum." Thus the Council of Trent [*Sess.* xiv. ch. 7] says, "Since the nature and order of a judgment require this, that sentence be passed only on those subject (to that judicature), it has ever been firmly held in the Church of God, that the absolution which a priest pronounces upon one over whom he has not either an ordinary or a delegated jurisdiction ought to be of no weight whatever." Notices to the same effect are frequent in conciliar decrees. Canon 7 of the second Council of Seville, A.D. 619 [Mansi 10. 559] is as follows, "Nam quamvis cum episcopis plurima illis [sc. sacerdotibus] ministeriorum communis sit dispensatio, quædam novellis et ecclesiasticis regulis sibi prohibita noverint sicut presbyterorum ..... consecratio, sicut constitutio altaris .... siquidem nec licere eis chrisma conficere, sed nec publice quidem in missa quemquam pœnitentium reconciliare. Sed neque coram episcopo licere presbyteris .... pœnitentes sine præcepto episcopi sui reconciliare."

So far as regards reasons and authorities for the necessity of jurisdiction ordinary or delegated.

Ordinary jurisdiction is that which is acquired à jure: it attaches to some office or position, and is independent of the will of a superior, and continues in the holder so long as he is in lawful possession of the said office or position. It is thus defined by Suarez [*ubi sup. n.* 6], "Jurisdictionem ordinariam dicitur habere is, qui ex vi proprii muneris et officii est superior alteri. Et presenti materia [sc. pœnitentia] dicuntur illam habere qui ex officio sunt pastores animarum qui propterea etiam possunt hanc jurisdictionem aliis committere." Sylvester [*Summa Sum.* s. v. *Jurisd.*] reckons four ways in which ordinary jurisdiction may be conferred, viz., by—1. lex inanimata, 2. lex animata, 3. custom, 4. consent. But the latter two are more generally reckoned as conferring only delegated jurisdiction, as the possession so acquired is in reality dependent on the will of a superior, or, if in certain special cases it could be shown to be not so, then it would fall under the head of jurisdiction given by lex inanimata.

Generally, then, it is reckoned that there are two sources only, 1. lex inanimata, that is to say, that the jus commune of the Church has attached jurisdiction to certain offices or benefices to which are attached the cure of souls; 2. lex animata, or the supreme legislative power, which is so rarely exercised that we may for practical purposes leave it out of consideration. Jurisdiction thus acquired is limited in three ways: 1. quoad tempus, 2. quoad locum, 3. quoad personas. That is, it lasts only so long as the possession of the benefice, etc. lasts, and ceases together with the determination of such possession; it can only (per se loquendo) be exercised in a certain place or places; and it only extends over certain persons. The same observations apply to delegated jurisdiction, except with regard to time, as to which I shall have something further to say presently. Those who possess ordinary jurisdiction in foro pœnitentiæ are classed by Suarez [xxv. 1. 1. &c.] in three orders: 1. Summus Pontifex, 2. Bishops, 3. Parochi. Under the latter head are included Vicarii perpetui—Vicars, or, generically, Incumbents as we should commonly say in English, Archipresbyteri, Prelates of Religious Orders, or heads of Religious Houses being Priests, and in general "omnes quibus ex jure vel ex privilegio speciali commissa est cura aliquarum animarum." This last clause must of course be understood only of those who hold such offices in such sort as to be irremoveable except by judicial process, but not of those holding only durante bene placito.

As the term proprius sacerdos will be frequently employed, I may as well say that I use it as understood by S. Thomas and S. Bonaventura. Thus the latter says [In 4 *Sent.* dist. 17. p. 3. art. 1. q. 2] the proprius sacerdos is either, "1. Quicunque potest confitentem absolvere sive per propriam auctoritatem sive per commissionem vel demandationem: ut pote sunt illi qui habent privilegium dum prædicant audiendi confessiones.—2. Omnis ille qui ex propria auctoritate vel officio tanquam prælatus ordinarius potest absolvere, ut episcopus et sacerdos parochianus.—3. Qui administret sacramentum et cui commissa est specialis cura." And S. Thomas [In 4 *Sent.* 17. 3. 2.], "Proprius sacerdos duplex est. Vel ex jurisdictione ordinaria sicut parochialis sacerdos, vel episcopus, vel papa vel ex jurisdictione delegata, sicut ille cui committit potestatem audiendi aliquis horum trium."

Delegated jurisdiction is that which is granted by a superior either directly expressly and explicitly, or indirectly tacitly or implicitly. Such jurisdiction is dependent as to its limitation in every respect on the will of the superior. The consent or commission by which it is granted is revokable at any moment. Now as regards the question of delegated jurisdiction, there are several important practical points to which I must ask your attention.

The manner of delegation may be divided into two heads, 1. direct, 2. indirect. Or as Suarez says, "Potest autem duobis modis jurisdictio concedi seu delegari—primo directe concedendo jurisdictionem sacerdoti ut quando parochus assumit sacerdotem aliquem idoneum coadjutorem ad tempus vel episcopus aut papa alieni committere hoc munus secundo ex parte pœnitentis ut quando alicui conceditur facultas eligendi confessorem [*Disp.* xxvi. pref.] Under each of these two heads occur various conditions and limitations.

The first point to investigate is, Who may delegate jurisdiction?

All priests having ordinary jurisdiction as proprii sacerdotes in cure of souls can delegate the jurisdiction they thus possess to others. Thus Victoria [*Sum. Sacr.* 149] says, "Ex commissione proprii sacerdotis (vel papæ, vel episcopi, vel parochi) possumus alteri, vel clerico seculari vel fratribus expositis confiteri." And Suarez [xxiv. 2. 6.] "Pastores animarum possunt hanc jurisdictionem aliis committere. Unde illi dicuntur habere hanc jurisdictionem delegatam qui solum habent illam ex commissione et propterea per se non possunt eam aliis subdelegare." Again Sylvester [*Summa Sum.* s. v. *Confessor.* I. 4] says, "Quæritur quis possit licentiare ad audientiam confessionis? Et dico quod omnis proprius sacerdos qui jure ordinario potest confessionem audire, potest hoc alteri committere. Est autem ordinarius primo quicunque habet curam animarum per electionem unde licentiare potest quemlibet subditum suum ad confitendum alteri. Et secundo quicumque ex officio annexo hoc habet licet non sit per electionem. Et tertio gerens vicem curati per legem aut consuetudinem." The general rule is that every one who has ordinary jurisdiction can delegate to others. So Sylvester [*Summa Sum.* s.v. *Delegatus* 1], "Quæritur quis possit delegare? Dico quod quilibet ordinarius." And Suarez [xxvi. 1. 3]

"Generalis regula est posse delegare hanc jurisdictionem omnes qui illam habent ordinariam." The principle is clearly indicated both in the canon *Inter Cetera* of the Lateran Council, as well as in the *Omnis utriusque sexus* of the same Council. And he adds, "Parochus respectu suorum subditorum potest hanc jurisdictionem committere seu delegare .... ut recte notavit Navarrus et doctores omnes." The importance of this principle is very great. Its application to the right of the parochus to delegate his authority is further shown by the gloss of Lyndwood v. *Ad Vicariam* in the Constitution of Otho *De Inst. Vic.* [ed. Oxon p. 24] "Quidam sunt Vicarii mercenarii et sic convicarii rectorum, qui ad tempus assumuntur temporales ad placitum rectorum *et sine licentia* episcopi, et tales missas *et cetera sacramenta* vice rectorum recte ministrant. Immo et Vicarius perpetuus hujus modi convicarium temporalem habere potest in adjutorium suum et *sine licentia* episcopi dum tamen statutum provinciale vel synodale non impediat." And so too the gloss on v. *in propriis personis* in the same constitution.

It will thus be seen that every beneficed priest in cure of souls can, without any licence being required from the bishop, delegate jurisdiction to another priest to hear the confessions of his, the delegator's subditi. And further, to exercise all such jurisdiction in foro pœnitentiæ as the delegator himself stands possessed of. But inasmuch as every parish priest—I mean when I use this term the rector, vicar, or perpetual curate of a Church—has by virtue of the exhortation in the Communion Office jurisdiction over all who come to him, it follows that every such priest can, without licence of the bishop, give to another priest jurisdiction to hear the confessions of all who may come to him at the church or other place, within the parish, appointed for the hearing of confessions. But when it is said *sine licentia episcopi*, it must be clearly understood that this does not mean in opposition to the bishop. The latter may prevent the delegation here spoken of, either by restraining the parochus, or by forbidding the delegate to act. For it is a general principle that the superior can restrain the inferior. "Prelatus superior potest hanc delegationem impedire sicut potest casus reservare." [Suarez, xxvi. i. 3.] The superior cannot indeed directly restrain the inferior who has ordinary juris-

diction, in the exercise of that jurisdiction as regards its essential matter. Thus he cannot prevent his hearing the confessions of his subditi, though by reserving cases he might prevent his giving absolution without referring to him in such cases. Nor can he directly take away the right of delegation. But he can practically do so, because he has a right to say, "I forbid you to delegate your jurisdiction except to such priests as I approve." So if a bishop distinctly promulgates, in a proper official manner, a direction that no priest not belonging to the diocese is to officiate within it without his permission, then no parochus could delegate except to such priest as had that permission. If the diocesan rule were that no foreign priest might officiate for more than (say) a fortnight without the bishop's permission, then a parochus might delegate jurisdiction within that period, but not for longer. Similarly, if the diocesan has prohibited any priest nominatim, no parochus within that diocese could delegate jurisdiction to him. You will, I think, perceive that many practical questions of the present day are solved by the above considerations.

On the other hand, you will of course note that, if the bishop gives jurisdiction to any priest for either a part or the whole of the diocese, such priest may absolve within the limits of any parish within such diocese, or such part of such diocese, whether the parochus consents or not. [Suarez, *ubi sup.* 8.] This point is applicable to the case of assistant curates amongst ourselves, and vicaires in France. Assistant curates receive their jurisdiction direct from the bishop, and not from the parochus. Their jurisdiction is a delegated jurisdiction, given to them explicitly by the terms of their license, by which they are empowered to "perform all ecclesiastical duties belonging to the said office." It is very important that this should be borne in mind—the fact, I mean, that the jurisdiction of an assistant curate in foro pœnitentiæ is independent of the parochus, and not derived from him. The parochus of course, inasmuch as the external government of the church and parish belong to him alone, can regulate the external arrangements as to the hearing of confessions. But he cannot forbid any of his subditi making their confessions, if they choose to do so, to the assistant curates, nor can he forbid the latter to hear confessions, either in toto, or those

of a certain class; and this for the sufficient reason that the parochus is not the ordinary from whom the assistant has received his jurisdiction, but the bishop. But the inferior cannot restrain the jurisdiction of his superior, whether that jurisdiction is exercised personally and directly or by delegation. There is no difference whatever in a parochus attempting to restrain the jurisdiction of the assistant and his attempting to prevent the diocesan from hearing confessions in his parish. He has no more power to interfere in the one case than in the other. Thus Suarez [xxvi. I. 12] says distinctly—"Parochus non potest prohibere parochianum suum quominus confiteatur religioso habenti privilegium ad audiendas confessiones vel alteri sacerdoti ab episcopo exposito et ab illo jurisdictionem habenti." Whether the parochus has a right to forbid the assistant hearing confessions in the church or vestry, may, perhaps, be doubtful. It might be argued that, just as the parochus can undoubtedly prevent the assistant preaching or baptizing, or indeed taking any part in the services of the church, so he can forbid him hearing confessions at the church; and if the assistant did so in spite of the prohibition, the absolution so given would be invalid through defect of jurisdiction quoad locum. But the argument is not a sound one; for, first, the parochus cannot wholly prohibit the assistant from exercising his functions. He may do so unquestionably in all but two cases; the one is, that as all priests in cure of souls—assistants as well as parochi—are bound on all Sundays and Festivals to say Mass for their parishioners and penitents, therefore the parochus is strictly bound to afford each of his assistants the opportunity of doing so on such days, and the assistants have a clear canonical claim to the use of the altar on such days; but of course at such times, within canonical hours, as the parochus may choose to appoint. This disposes by itself of the whole ground of the argument. The other case is, as I contend, the case of confessions. And the reason is the same in both, viz., that the saying Mass on certain days, and the hearing the confessions of such as apply to him, are duties personally attaching to every priest in cure of souls by virtue of that position, and cannot, except in special circumstances of necessity, be discharged but by himself. But the duty of discharging these functions connotes the correlative right to say Mass and hear confessions,

We must now enquire what qualifications are required in the priest who receives delegated jurisdiction. The chief point is whether he must be one approved by the bishop. And here I would remark that it is not uncommon at the present day to find a considerable confusion existing in many minds as to the distinction between approbation and licence. It has even been assumed that because there is absolutely no trace of any such formal approbation being given, or special licenses for hearing confessions being issued by English bishops in post-Reformation times, that therefore there is no jurisdiction required, and the simplex sacerdos may as rightly and validly give absolution as the diocesan himself. But "approbation" has nothing whatever to do with jurisdiction. In its present form it belongs simply and solely to the Tridentine Canon Law. "Approbation" is nothing more than the formal certificate of the bishop that a certain priest is duly qualified as far as casuistical and other knowledge is concerned, and is in other respects fit for the sacred work of the tribunal of penance. But the "approbation" is not enough; the "approved" priest must obtain jurisdiction, either ordinary or delegated, before he can take his seat in the confessional. According to the modern Roman discipline, jurisdiction can only be licitly delegated to an approved priest, though if it were given to one not approved the absolution given by such priest would be valid. But the pre-Tridentine Canon Law, with which alone we are concerned, made no such condition necessary. Thus Suarez states positively [xxvi. 1. 1.] that jurisdiction may be delegated to any priest, but, "ut rite fiat (that is according to the modern discipline) necesse est ut talis sacerdos sit approbatus juxta formam concilii Tridentini." Nor is any special form in any way needful. "Dicendum est nullam aliam formam esse ad hoc specialiter requisitam præterquam quod delegans sufficienter explicet voluntatem suam, supposita potestate: nam quibuscunque verbis, signis, aut scripturis hoc fiat ad hunc effectum efficit" [*ubi sup.* 13]. All that is necessary is that the delegate should be *idoneus*, not technically but mentally, morally, and physically; that is, that he should know the difference between mortal and venial sins, and how and when to give absolution and impose penance, that he should be one of a right life and conversation and free from censures, and that he should be physically capable of hearing confession. Nothing further, as all the older canonists hold, was necessary under the pre-Tridentine law.

Having considered who may delegate, and to whom delegation may be made, we must now enquire in what way delegation of jurisdiction may be effected. There are three ways according to Suarez [xxvi. 2. 1, etc.]: 1. A jure—sc. ex parte pœnitentis.—2. à consuetudine—3. per concessionem hominis. We will pass over the first mode for a moment, as it involves some most important considerations. Taking then the second mode, there are generally reckoned three cases: 1. In articulo mortis; 2. in case of the confession of only venial sins or sins already confessed; 3. in the case of the ordinary confessions of the clergy. In the second and third cases every priest, unless excommunicate or inhibited, has jurisdiction; in the first case of course, any priest, without any exception whatever, has jurisdiction. It must be understood that, strictly speaking, it is not by custom—that is, the frequentated acts of the penitent or confessor—that the jurisdiction is acquired, but rather by the tacit consent of the Church, of which the custom is a witness. It is indeed doubtful whether in the two latter cases the consent of the Church is not more than tacit. The third mode by which jurisdiction is given, namely, per concessionem, is two-fold: 1. Concessio privata et personalis, when the superior directly delegates to an individual; 2. Concessio communis et publica, such as the general concession to a religious order.

We recur now to the first mode by which jurisdiction is delegated à jure, or ex parte pœnitentis. This does not mean that the penitent gives jurisdiction to his confessor—an idea manifestly absurd, and cutting at the root of every sound idea about jurisdiction—but only that the penitent, or rather the action of the penitent, is the medium whereby the jurisdiction is granted, by virtue of the provisions of the Church made for such cases. Jurisdiction can only be conveyed to a priest in this way when the penitent has had accorded to him the faculty of choosing his confessor. Such faculty must of course be granted by a superior having ordinary jurisdiction over the penitent. In view of the interpretation which may be put upon the exhortation to communion, viz. that the authorities of the Anglican obedience collectively,

and every parochus who reads that exhortation individually, grants the faculty of choosing a confessor—how far limited by the words "discreet and learned" I will consider presently—it is obviously a matter of much importance to know what are the consequences which follow upon the granting such faculty, and the conditions of the grant.

The first consequence is, that by this grant the priest chosen by the penitent receives jurisdiction over him. This Suarez [xxvii. pref.] clearly shows. In the faculty (not necessarily an official document) accorded to the penitent is necessarily involved also the grant ex parte superioris of the correlative jurisdiction. "Sunt enim hæc duo quasi relativa et connexa, subjectio unius et jurisdictio alterius; et ideo uno concesso, aliud concedi necesse est."

This faculty may be acquired in three ways: 1. à jure; 2. ex consuetudine; 3. personaliter. À jure—this Suarez reckons as twofold; and that the Pope alone has the right à jure divino to choose his confessor. A jure ecclesiastico bishops and their superiors, as well as inferior exempt prelates, have the faculty [xxvii. 2. 4.] The faculty is not terminated uno actu, but extends to the choice of any number of confessors. No special cause is needed for its grant, the simple wish of the penitent is sufficient reason.

One case, or rather class of cases, must be more particularly considered. That is, where it may be rightly presumed that the penitent has acquired this faculty ex vi circumstantiis. Presumption, I may observe, must never be de futuro, but strictly de presenti. These cases are, when the parochus is ignorant, and likely to be an unfit confessor; when he is absent, and has left no representative; when he is dead or taken suddenly ill; if, when asked to hear the penitent's confession, he refuses to do so or cannot do so; or if the penitent have any reasonable cause for not confessing to the parochus, and knows that that cause is known to him. There is a certain divergence of opinion whether in these cases the penitent may choose another confessor. So far as my study of the subject extends, it appears to me that the balance of authoritative opinion is decidedly in favour of his doing so. And this chiefly on the ground that the grant of all jurisdiction to priests in foro pœnitentiæ is in favorem pœnitentis, and not as a mere personal gift to themselves, or as it

were an appendage of dignity. Thus S. Bonaventura [In 4 *Sent, dist.* 17. 3. 1. 2] says, as to liberty of confessing to other than the proprius sacerdos, that there are three cases in which the penitent may do so: 1. If the proprius sacerdos has given the other priest leave to hear confessions. 2. If the other priest have leave either in plenam or in casu from the superior; and such leave is commonly granted, he says, on account of the general ignorance, &c. of parochi. 3. Though people ought to confess to their proprii sacerdotes "si sint boni et idonei," yet "si parochianus habet causam legitimam propter quam rationabiliter refugit ipsum vel quia solicitat ad malum vel quia timet revelationem confessionis vel quia simplex est et idiota, &c.," then he may freely go to another priest. Suarez [xxvii. 2. 12] says, "De omnibus fidelibus pro aliquo casu invenitur quoddam speciale jus in cap. *Placuit* 9. q 2. *de Pœniten. d.* 6. ubi multi intelligunt concessam esse cuibilet fideli facultatem eligendi confessorem si proprius sacerdos est ignorans." And he says that Navarrus and others think that this at once frees the penitent. But he himself thinks that he ought to go to the bishop; but if the bishop also be ignorant, then the penitent is free. On the contrary, Victoria [*Sum. Sacr.* 146] holds that in case of moral or physical disqualification of the proprius sacerdos, and the refusal of the superior to grant a facultas eligendi, that the penitent must be content with eliciting an act of contrition. He admits, however, that the authority of De Palude is against him. I may also add that Sylvester [*Summa. Sum.* s. v. *Confessor*, i. 14] says that if the proprius sacerdos refuses to hear the confession, and does not send the penitent ad confessorem determinatum "videtur ei (sc. pœnitenti) tacitè dare licentiam ut pro ea vice ille confiteatur cui voluerit." And Martinet [*Theologia Moralis*, iii. 11. 2] seems to take the same side. You will, I think, agree with me that unhappily at the present time among ourselves there are a very large number of penitents who on the above principles must be presumed to have the facultas eligendi quite independently of whatever interpretation the exhortation may be made to bear. They have also, as you will perceive, an important bearing upon the question of our penitents making their confessions when in dioceses out of England. My own advice in all such cases would be,—go to the proprius

sacerdos of the place where you are; tell him without any reserve what your ecclesiastical position is; he will probably, if not certainly, refuse to hear you; but by such refusal he at once frees you, and, as Sylvester expressly says, gives you tacitly permission to go to another priest, and in giving that permission, gives to the priest you choose the jurisdiction he needs.

The second way in which the facultas eligendi may be acquired is ex consuetudine. That is, of course, not the custom of certain persons choosing their confessors, but the custom of the superior tacitly permitting a certain class to do so. There are two cases in which this custom prevails [Suarez, xxvii. 3. 2], viz., in the case of all secular priests, both parochi and simple priests, and in the case of those who have only venial sins to confess, and who are therefore not bound to go to their proprius sacerdos. The remaining way in which the faculty may be acquired is by personal grant from the superior. This may be given either individually, or to a class of the subditi, or even to the whole body. It may be granted not only by the immediate, but by any superior. Thus, if the bishop grant such faculty, no licence is needed from the parochus, and so on. And, on the other hand, the superior can, if he should see fit, reverse the permission accorded by the inferior; but all who have ordinary jurisdiction in foro pœnitentiæ may grant the faculty: "omnis ille qui habet jurisdictionem ordinariam in hoc foro respectu aliquorum fidelium potest illis concedere hanc facultatem eligendi confessorem; dummodo confessor habeat conditiones requisitas, ut ipse possit suam jurisdictionem ei delegare: ita enim est semper hæc facultas intelligenda" [Suarez, xxvii. 1. 1.] Hence the bishop and the parochus, as well as every one included under the latter title, can grant this faculty.

The permission to choose a confessor is to choose one who is fit, "idoneus." Who is a "sacerdos idoneus" in respect to the tribunal penance? Clearly every one who has ordinary jurisdiction must be presumed to be idoneus. Thus Suarez [xxviii. pref.] says, "omnis ille qui ordinariam habet jurisdictionem in hoc foro ratione sui muneris supponitur idoneus, et id quod sufficit ut reputetur idoneus ad tale munus suscipiendum sufficit etiam ut sit idoneus ad hoc sacramentum ministrandum." That is, the penitent may primâ facie take

it that such priest is idoneus. But if he is morally sure that such priest is wanting in the essentials which constitute "fitness" for the office of confessor, then the fact of the possession of ordinary jurisdiction would not constitute a sufficient test, and the penitent would have no right to submit himself to such a confessor. For to do so would not be rightly and duly to submit himself to the power of the keys, inasmuch as the confessor, ex hypothesi, would be one who would not know how to use the keys. And not only is it not permitted to a penitent who has the facultas eligendi to go to a priest who is not idoneus in other respects, even though he have ordinary jurisdiction, but he could not licitly confess even to his parochus "si pœnitenti moraliter constet scientiam illius sacerdotis respectu conscientiæ suæ non esse sufficientem, quia veritas præferenda est præsumptioni" [Suarez xxviii. 2. 9]. Now fitness in the minister of the Sacrament of Penance consists in three things: 1. Potestas. 2. Bonitas. 3. Scientia. Potestas is two-fold, natural and supernatural. Natural—that is, that the confessor must be physically and mentally capable of hearing and understanding the penitent. Supernatural—in that he must have the power of order. Bonitas is not of course necessary for the absolution pronounced by the confessor to be valid. He may be a heretic or anything, so long as he has not been visited with ecclesiastical censure. But as the facultas distinctly requires, ex jure communi, that the penitent shall not choose one whom he knows to be unfit, and therefore the implied grant of jurisdiction is restricted, it would follow that jurisdiction does not pass to a confessor not idoneus, if the fact be morally known to the penitent, and hence that the confession and the absolution following would not only be illicit, but invalid; though in the case of confession made to the proprius sacerdos, if not idoneus, it would be only illicit, but not invalid. [cf. Suarez xxviii. 1. 4. &c.] I would remark, with regard to our own present necessities, that under this head I should certainly be disposed to reckon the fact of the proposed confessor not being one who himself used confession as distinctly disqualifying him for the office. Indeed, it would seem to be exceedingly important to warn our people that they do not make their confessions to such priests.

As to the third qualification, scientia, it is sufficient that it be a minimum—that is, that the priest knows how to distinguish mortal from venial sins, and when and how to give absolution and assign penance. Though, of course, the science needed for the guidance of souls is very much more than this, still this minimum is sufficient that a priest may licitly absolve in most cases.

But now comes the question, whether the penitent is free to choose a priest who does not possess ordinary jurisdiction. The canon law anterior to the Council of Trent differs from the Tridentine discipline. According to the latter, no priest not having ordinary jurisdiction can hear confessions unless he is approved by the bishop. But it was, as we shall see, different under the older canon law, and it is this only which we need consider.

The present point extends not only to the case of the priest chosen by a penitent who has the facultas eligendi, but is an enquiry as to whether, under the older canon law, any further condition was necessary that a priest might be an idoneus judex delegatus in foro pœnitentiæ. Of course, when the bishop is the delegator no question can arise. It is only in the case of either the direct delegation by the parochus, or the indirect delegation through the penitent, that there could be a doubt.

There are two opinions. The first is, that in order that a priest may be idoneus, he must either be one having ordinary jurisdiction circa aliquem populum, or that he must be approved by the bishop as idoneus. This opinion rests chiefly on the gloss v. *Alieno*, cap. *Omnis utriusque sexus* [ex Decret. Greg. v. 38. 12] "executionem [i.e. jurisdictionem] habenti—hoc dico propter illos sacerdotes sive sæculares sive regulares, qui non habent ordinis executionem sacerdotalis; ut sunt illi qui non sunt a populo electi, vel qui ab episcopo populo non præficiuntur." Panormitanus [Super Decretalia in cap. *Omnis*. 14. fol. 161] says, "Parochianus cui data est licentia eligendi sibi confessorem non potest confiteri non curato." Stress was also laid upon the gloss on v. *speciali* cap. 1. in Clement. de Priv., "hic de pœnitentia non dicitur quæ etiam [sc. privilegia] de licentia sacerdotis proprii recipi non possit a presbytero non habente curam;" and also on the canon of the Spanish Council I have before cited, and on

a passage in the 4th epistle of Damasus. And so Melchior Canus [*Relect. de Pœnit.* vi. p. 951. Op. Om. ed. 1605] holds that the confessor must be one approved, but not necessarily having jurisdiction otherwise than through the choice of the penitent. He admits, however, that the contrary opinion is the common one, viz., that the confessor must be idoneus à jure divino et naturali, and not necessarily by any formal or official attestation.

This second opinion is undoubtedly the most common; in fact there can be no question but that, under the pre-Tridentine law, every penitent who had the facultas eligendi conceded to him was free—unless of course the faculty made any express condition to the contrary—to choose any priest as his confessor, whether such priest were only simplex, or one having ordinary or delegated jurisdiction, whether he was one formally approved, or whether he were wanting in such official qualification, so long only as he was idoneous à jure divino et naturali. And the confessor so chosen received jurisdiction indirectly through the penitent from the proprius sacerdos who had given the faculty. Before adducing authorities in support of this statement, let me just observe that it is quite sufficient for us in England to follow the pre-Tridentine discipline—that, namely, founded on the law of the Lateran Council. There need be no divergence of opinion as to this point of practice between those of our brethren who would be more disposed to hold to the authority of the Council of Trent, and those who take a different line. For canons of discipline, even of a general council, do not strictly bind or override former discipline, more especially if they are in restriction of greater freedom or privilege, unless they have been duly and canonically promulgated, not simply ad orbem, but in provincial synod. As a matter of fact the Tridentine decrees have never been so promulgated in the provinces of the Anglican obedience, and hence, whatever their intrinsic value, we are not and cannot be bound by them in matters of discipline, however valuable they may be, and however right it may be to have regard to them by way of counsel. Indeed, so far from the Tridentine canon law being binding upon us, it is not universally binding even in the Roman obedience.

But let me ask your attention to a few authorities for my previous statement. De Palude [In 4 *Sent.* d. 17. 4. 18, ed. 1522]

says, "Sciendum autem quod in absolutione pœnitentiali principaliter consideratur potestas ordinis, secundario potestas jurisdictionis. Unde sive detur confessori licentia audiendi; sive confitendo licentia confitendi, vel confessorem eligendi, sufficit quia tunc quasi cedit aliis jus suum." Soto [In 4 *Sent.* d. 18. 4. 3. i]: "His tamen non obstantibus [sc. consideration drawn from the places of the Corpus Juris already referred to] non est timendum quia quos voluerint eligere valeant, et hæc est opinio communis. Et ratio est quod ad absolutionem solum requiritur potestas ordinis et jurisdictionis; et quidem potestatem ordinis quicunque sacerdos habet, et jurisdictionem ille qui privilegium contulit per electionem pœnitentis qui ei confert." Medina [*Codex Confess. Tract.* ii. q. 34], after elaborately discussing the contrary opinion, concludes that "Oppositum tamen videtur tenendum cum theologis et probatur primo quia episcopi qui habent a jure licentiam quâ possunt sibi eligere confessorem virtute hujusmodi licentiæ possunt simplicem sacerdotem eligere et valet absolutio ut est communis practica et consuetudo; igitur etiam parochianus habens licentiam à curato vel episcopo vel alio ordinario poterit virtute talis licentiæ eligere sacerdotem simplicem." Sylvester [*Sum Summa. v. Confessor*, I. 5] having carefully criticised the opposite arguments, asserts, "Nec obstat; quia dico quod quilibet sacerdos ex quo est sacerdos habens claves habet potestatem ligandi et solvendi et jurisdictionem in habitu, licet exercitium non habeat ex defectu subditorum sive materiæ tantum. Unde cum sibi materia exhibeater per talem licentiam exercere potest suam potestatem et absolvit quam habet propria auctoritate." Franciscus à Victoria, a canonist whose authority is acknowledged as of the very greatest weight, although his works are now so exceedingly scarce as to be little known, says [*Summa Sacramentorum*, 150], "Quæritur utrum qui habet auctoritatem eligendi confessorem per bullas vel alia ratione quacunque possit eligere simplicem sacerdotem nondum expositum ad audiendas confessiones. Respondeo *absolute quod sine quocunque scrupulo potest eligere quemcunque sacerdotem*. Ratio est quia in hoc solo differt sacerdos habens jurisdictionem a non habente quod ille habet materiam, hic autem non; et huic nihil aliud deficit ad hoc ut possit absolvere, nisi materia circa quam exerceat potestatem quam accepit dum fuit ordinatus. Cum ergo recipienti bullas [&c.] detur potestas subjiciendi se cui voluerit, jam talis sacerdos electus

habet materiam et jurisdictionem circa illum, unde nihil sibi deficit. Et ita tenendum est." At the risk of being tedious, I must ask you to allow me to finish this part of our inquiry by quoting to you the opinion of Suarez, as he has gone so very fully into the subject, as to who is a sacerdos idoneus. He clearly comes to the conclusion that it is competent to the parochus to delegate his jurisdiction to a simplex sacerdos without any licence or approbation from the bishop, and that it is also competent to the penitent who has a facultas eligendi, to choose a like priest. Suarez thus sums up the question [*Disp.* xxviii. 3. 5]: "Dico ergo primo parochus ante Concilium Tridentinum ex vi juris communis poterat et valide et licite suam jurisdictionem committere *cuicunque* sacerdoti qui secundum naturale seu divinum jus idoneus esset ad hoc sacramentum ministrandum; etiamsi aliam jurisdictionem vel episcopi approbationem non haberet. Probatur quia in delegante erat potestas, quia hæc convenit illi ex vi ordinariæ jurisdictionis, et hæc non erat ligata aut impedita, ut supponimus, quia ex parte ipsius parochi nullum erat jus positivum prohibens illi delegationem, immo neque nunc est [sc. post Tridentinum] ut infra videbimus. Rursus ex parte alterius extremi in sacerdote erat capacitas, et nullum etiam erat jus specialiter requirens in illo alterutram ex dictis conditionibus quia neque in concilio, aut pontificio decreto ostendi poterit, neque etiam ex natura rei sequitur; nam cui committebantur oves tanquam ordinario pastori etiam poterat committi cura assumendi dignum et sufficientem coadjutorem; et ideo quamdiu hoc non prohibebatur censebatur commissum. Atque hoc modo posset responderi ad illos antiquos canones negantes posse sacerdotes reconciliare pœnitentes sine licentia episcopi; nam qui a parocho habet licentiam, mediate saltem censetur habere ab episcopo, *quamdiu id non prohibet*. Quamvis fortasse illi canones loquantur, vel de reconciliatione quæ fiebat de publicis pœnitentibus vel de eo tempore quo episcopi erant quasi immediati pastores suarum diœcesium, absque divisione parochiarum per propria beneficia. Semper tamen [I ask your attention to this] subintelligenda est conditio, dummodo talis sacerdos non sit specialiter suspensus, vel prohibitus ab episcopo, nam hæc ipsa conditio in jure divino aut naturali fundata est." And then he in like manner proves that the penitent, having faculty to choose his confessor, may choose any priest idoneus à jure

divino et naturali. [*n.* 6.] "Dico secundo, stando in jure antiquo, per generalem facultatem datam ad eligendam confessorem eligi poterat quilibet sacerdos jure divino idoneus, absque alia conditione aut approbatione jure humano requisita. Probatur eodem fundamento quia nullum ostendi potest jus ubi hoc sit præscriptum. Unde si superior dans facultatem expresse declararet in hoc sensu illam dare, dubitari non potest quam talis facultas esset valida." He explains this latter sentence thus: [*n.* 7] "Ex quo ulterius infero quamvis daretur facultas per hæc generalia verba, sacerdotem idoneum, non fuisse limitandum aut necessario interpretandum de sacerdote declarato idoneo publica auctoritate, alterutro ex dictis modis; quia hæc declaratio aut limitatio non habetur in jure, neque est necessaria ex vi solius rationis quia aliis modis potest sufficienter constare de idoneitate confessoris; scilicet per experientiam, aut publicam famam seu notitiam aut per aliorum fide dignorum testimonium."

The applicability to our own case of what I have just laid before you will be at once perceived. There can be no question but that laity as well as clergy of the Anglican obedience have, by virtue of the exhortation, the facultas eligendi confessorem granted to them in the most unequivocal manner. The only point about which there can be any doubt is, whether the words "discreet and learned" are to be taken by way of limitation, or whether they are simply equivalent to "idoneus." If the latter, then there can be no doubt but that all of us may choose any priest we like as our confessor, and that he can licitly and validly absolve us, subject to certain restrictions, quoad locum, which I shall presently describe, and supposing him not to be prohibited by the diocesan, and to be idoneus à jure naturali. But the doubt is whether "discreet" is or is not a technical term. Let me put before you such evidence as I know of on either side. Let us take first the opinion that "discreet" is a technical word. In a note on p. 104 in his book, "The Doctrine of Confession," Br. Carter gives the following as the opinion of Dr. Irons, as to the meaning of discreet:—"This is a term well known in Canon Law. It does not mean any common virtue which a man may attribute to himself, but *definite* virtues ascertained by the bishop or ordinary. 'Discreet' canonically means, approved by the bishop as discreet, and

'learned,' approved by the bishop as learned. They are technical terms. Thus a priest may be discreet for one thing and not for another. Lyndwood says, that Rural Deans may hear confessions in their own parishes (because they are parsons), but they may not hear them elsewhere, because they are not *discreet*, i.e., specially commissioned for such an exercise of their powers." Now Du Cange s.v. *Discretus*, says "apud Scriptores nostros medii ævi non semel occurrit *vir discretus* pro *viro prudenti*." Vossius [*De Vitiis Verborum*, s. v.] inveighs strongly against the use of discretus as equivalent to prudens. But the force of his invective is lost unless we admit that mediæval writers *did* use the word in this sense. Du Cange, who relies on the statement of Vossius, must, I think, have drawn too hasty a conclusion from his words. The only certainly technical use I know of is, that the representatives sent to the general chapters of religious orders from the provincial chapters, or rather from the chapters of the dependent houses, were called Discreti [see Andrè, Dict. du Droit Canon s. v.] And in convents Discretæ was a title given (I quote from Du Cange) to those "quibus rerum secretiorum incumbit cura quæ ad secretiora consilia admittuntur; ut fratres maturi in [monasteriis] virorum." Discretio was also used in a quasi technical sense as a title of honour applied to high officials. Thus Robert de Beauchamp, temp. Henry III. addresses a certificate, "Domino et amicis meis thesaurario et baronibus de saccariis . . . . vestris *discretionibus*, etc. [see Madox, *Formulare Anglicanum* p. 5, n. xi.] Latham in his excellent edition of Johnson's Dictionary draws a distinction between "discreet" and "discrete." The former he gives as equivalent to prudent, circumspect, &c., the latter as the equivalent of discretus—distinct, disjoined. But I think I may say (and I have the authority of an eminent bibliographer, to whom I recently put the question, with me) that this distinction of spelling cannot be really drawn, nor, if it could be, would it be possible to build securely upon it. I may however mention that in both the folio London editions of May and June, as preserved in the Cambridge University Library, the word is spelt *discrete* (meaning, according to Latham, separated). The same spelling is employed in the Worcester quarto of the Second Prayer Book. I may also refer to one passage in a modern though old-fashioned writer,

Mede, in his Diatribæ, p. 191, ed. 1642, says, "Nay it is very probable that to show their despiciency of the poor Gentiles, and to pride themselves on their prerogative and *discretion* from them, &c,"

Doubtless it is due to my less varied reading, but I must say that, so far as my knowledge of canon law goes, I must arrive at quite a different conclusion from that maintained by Dr. Irons. So far from being aware that *discreet* is "a term well known in canon law," I should have said that it was quite unknown in a technical sense, except in the very limited instances I have given above, which, though, as you will doubtless think, not touching our case very nearly, are still the nearest I know of, or after considerable pains have been able to discover. I shall be exceedingly obliged to any of the Society who will kindly give me any nearer references.

Dr. Irons refers in a general manner to Lyndwood. But Lyndwood's authority appears to me to go directly against him. Thus the decree *De confessoribus* of the Council of Oxford, cap. *Quoniam* de Pœnit (p. 326, ed. Oxon.) runs thus, "Quoniam nonnunquam ob defectum confessorum et quia decani rurales et personæ erubescunt forte confiteri suo prælato, imminet periculum animarum; volentes huic morbo mederi, statuimus ut certi confessores prudentes et discreti per singulos archidiaconatus ab episcopi loci statuantur." Lyndwood's gloss on *discreti* shows clearly enough, even if the structure of the sentence did not, what is the meaning to be attached to the word. He says, "Discreto quidem facienda est confessio." And then, in order to explain who is discretus, he refers us to the gloss on cap. *omnis utriusque sexus*, Now that famous canon says that the priest to whom a penitent goes who is allowed to choose his confessor, must be "sacerdos discretus et cautus, etc." And a note of the Corpus Juris refers us further as to discretus to Peter Lombard's description of a confessor, On turning to the famous Master of the Sentences [iv. *dist.* 19. *Qualem.* E.] we find he says, "ex his satis perpenditur qualis debeat esse sacerdos qui alios ligat et solvit, discretus et justus; alioquin mortificat sæpe animas quæ non moriuntur et vivificat quæ non vivunt et ita incidit in maledictionis judicium." Is there in all this the least trace of discretus being a technical word? It is perfectly clear that it is used wholly in a moral sense. And this is confirmed by the Master's use of *indiscretus* a little further on [20 c.], where he considers the case of a penitent to whom a "sacerdos indiscretus" had given an improper penance. Further I may remark that the canon *Omnis*, etc. confirms this, by its use of the phrase, "postquam ab annos discretionis pervenerit," which the gloss on the word explains, "id est cum est doli capax quia tunc potest peccare." Again, the Constitution of Edmund, *De pœnitentia* (Lyndwood, p. 330) has, "nisi in casibus cum sacerdos non potest, vel absens sit, vel stultè vel indiscretè non vult." Here again indiscretè is clearly not used technically. But in his gloss on v. *discretis* cap. *In causis* De judic., Lyndwood completely disposes of the case. I presume this is the canon Dr. Irons refers to. It runs thus: "Statuimus ut decani rurales nullam causam matrimoniale de cetero audire præsumant, sed earum examinatio non nisi discretis viris committatur." On this Lyndwood says: "Hic nota quod *discretio* idem est quod divisio, scientia, discussio vel quarumlibet rerum consideratio ad quod tendat, et dicitur discretio omnium virtutum esse mater. Et hæc discretio considerari debet in hac materia maxime ut is cui talis causa committitur sciat discernere circa ea quæ in talibus causis a parte Juris Canonici sunt ponderanda. Sed numquid decanus ruralis ex commissione speciali possit cognoscere in causa matrimoniali si sit vir discretus et jureperitus.....Unde si talis decanus ruralis alias sit ad talia discretus, sciens, et idoneus bene potest talis causa sibi committi." I confess this seems to me to point to an entirely different conclusion, not only as to discretus, but as to rural deans, to what Dr. Irons draws. And once again I submit there is no trace of discretus meaning anything technical. I think I know everything that is said in Lyndwood about rural deans, and yet I certainly do not know anything which can support Dr. Irons' statement. On the contrary, it would appear from the constitution *Quod in quodam* of Otho, that rural deans could do more than only hear the confessions of their parishioners. They were à jure the confessors of the clergy of their deaneries. I know of no statement that they were not discreet to hear confessions. The instances, however, in which Lyndwood uses discretus and indiscretus in the moral sense are extremely frequent. Thus in the gloss on *Alterius parochianus*, in cap. *Sacerdos* de Pœnit. he gives as one of

the exceptions to the rule that people must confess to their proprius sacerdos, "quando proprius sacerdos indiscretus est;" there can be no shadow of doubt what the use of the word is here. On the whole I must submit to you that Lyndwood does not use discretus in a technical sense. That the word was used in mediæval and contemporary times, and by canonists, as equivalent to prudens is quite certain. Thus, to mention only one place in Suarez, he uses the word thus in xxviii. 2. 18. I have already shown that the Canon *Omnis utriusque sexus* so uses it. There is a similar use in the decretal of Gregory IX. [*Ex Decret. Gregory.* v. 38. 16] "Ne pro dilatione pœnitentiæ periculum immineat animarum permittimus episcopis et aliis superioribus necnon minoribus Prelatis exemptis ut etiam præter sui superioris licentiam providum et *discretum* sibi possint eligere confessorem." We have seen that such confessor need not have jurisdiction otherwise than through this faculty, and that he need not be approved, and indeed Melchior Canus (p. 950), in a marginal note, expressly takes it so in reference to this case, though he disputes certain inferences, so that it is quite clear that the Corpus Juris itself uses *discretus* not in the technical sense. As to contemporary usage, let me only remind you of "discreetly, advisedly, and soberly" in the Marriage Service; "discreet" in Genesis xli. 33, and Titus ii. 5; and lastly, of Shakespeare's use of it [*Coriolanus* III. 1]—

> "Less fearful than discreet,
> You love the fundamental part of state
> More than you doubt the charge of 't."

From all this evidence I must ask you to draw your own conclusions. I cannot myself entertain any doubt but that the words "discreet and learned" have not a technical meaning in the sense of indicating any licence or approbation or appointment by the bishop. But does it necessarily follow that they are no more than a somewhat pleonastic equivalent of "sacerdos idoneus?" I can scarcely think so. Here, indeed, I can only give you my opinion, and ask you to consider whether the grounds of it are of any weight. The point is one on which direct evidence is not forthcoming; we have nothing but presumption and analogy to guide us. First, then, I remark that general liberty to go to a confessor other than one's proprius sacerdos is not a custom of the Anglican

obedience only, but obtains throughout the whole Western Church. Everywhere the faithful go to whom they will; but with limitation. The confessor must not be simplex sacerdos. Thus Benedict XIV. [*Inst.* xviii. 9] says, "Apparet confessionis precepto satisfacere qui peccata sua cuilibet probato sacerdoti confiteatur." Nor does this limitation militate against what I have already drawn your attention to, as to the freedom of the choice where there is the facultas eligendi, because this is not properly a case of such facultas, inasmuch as, as we have seen, it cannot be generally gained by custom. Hence *probato* here must mean one having ordinary or delegated jurisdiction, either as a curatus or ex privilegio.

Next I notice that the exhortation is read by one having ordinary or delegated jurisdiction, who says, "Let him come unto me, or to some other discreet and learned minister," thereby putting himself into the class of the "discreet and learned." Now what is it that differentiates the priest who uses these words? what gives him a right to call himself a "discreet and learned minister?" "No man beareth witness unto himself;" so it cannot be simply an assertion that he possesses the moral and intellectual qualities of a good confessor. Nor can it be only that he is so by virtue of his ordination, because if so, all priests would necessarily be "discreet and learned," as part of the indelibility of Holy Order, and then the words would be a somewhat offensive redundance. We are then, I think, thrown back on the possession of jurisdiction (ordinary or delegated) as the sole possible differentiating factor. This it is that points a priest out as being, à jure ecclesiastico, "discreet and learned" in foro pœnitentiæ, because prima facie it is to be presumed that, unless he were so, he would not have obtained such jurisdiction; though we know, unhappily, that at the present time in the Anglican obedience it would be the exception rather than the rule to find ourselves able to act on such primâ facie presumption when choosing a confessor, because we should be reluctantly obliged to admit that the priest "discreet and learned" à jure ecclesiastico is now but too often not "idoneus" à jure naturali. I submit to you then, with some considerable confidence, that the words "discreet and learned" are a limitation on the freedom of the penitent in choosing a confessor, and are a direction to him to choose one

who has ordinary or delegated jurisdiction, and that if the penitent does not do so, his choice will then be an invalid choice, and the absolution pronounced be null and void through defect of jurisdiction.

I would also offer to you one further consideration in support of the opinion I have advanced. It is this,—that to assume that no limitation was placed on the choice of the confessor would be to impute to the authorities of the Anglican obedience a very grave degree of carelessness, if not criminal neglect, in regard to the regulation of the highest department of the pastoral office. This may seem strong language. It is not so strong as that used on this very point by Melchior Canus, though the scope of what he contemplates is much less. It is not the case of millions of souls that he is speaking of, but only of the comparatively limited number to whom in the Roman obedience the facultas eligendi is granted. Considering the fact that those who have it there are ordinarily quite capable of wisely, or sufficiently well, choosing their confessor, and considering also the unquestionable fact that, as we have seen, the older discipline was clearly against him, you will probably agree with me that his words are unnecessarily severe. Still he says, "Si summus Pontifex instituerit judices in foro interiori omnes sacerdotes simplices sine aliquo examinatione et probatione peccaret mortaliter quod non est existimandum de summo Pontifice in generali et publica concessione" [*Relect. de Pœnit.* vi. p. 951.] And again: "Præterea ridiculus esset immo nefarius summus Pontifex si examen et probationem idonei confessoris relinqueret arbitrio cujuslibet popularis" [*Ibid.* p. 952.] But I should, for my own part, scarcely think these sentences too strong were they applied, mutatis mutandis, to our own case. The supposition I combat seems to me to be one without any parallel, and full of difficulties both practical and theoretical. These difficulties are however, I venture to think, obviated by considering the words "discreet and learned" to be a limitation of choice to those who have jurisdiction, either ordinary, or delegated to them by some one having ordinary jurisdiction, viz. bishop, parochus, &c., or at least to those who have the right to hear confessions ex privilegiis. Such are regulars, if they are such canonically speaking; that is, if they are recognised by

ecclesiastical authority; for mere voluntary unrecognised association cannot acquire privilege. Others, again, are graduates in theology, according to Melchior Canus, who as a rigorist cannot be suspected of attributing privilege where it is doubtful. He says, in answer to the objection that the principle he had laid down would often exclude penitents from seeking the guidance of learned theologians who might be of great assistance to them, "Hinc ego respondeo ejusmodi viros in theologia magistros auctoritate publica haberi probatos non enim solent ab episcopi examinari" [*Ibid.* p. 954.] Whether there are others to whom the privilege may be extended, I confess seems doubtful. It might be argued that, whatever position is accepted by a bishop as a title for holy orders may, so long as it is occupied, be considered as a qualification for the office of confessor. I did at one time entertain this opinion, but subsequent consideration induces me to doubt its tenability; and certainly, though arguable, it cannot be positively proved.

But this brings us to the consideration of the case of doubt in respect to jurisdiction. This may arise from various causes, which will readily suggest themselves to you. In addition to such, I beg to suggest, on my part, the whole question we have just been considering. It must, I mean, be at least considered doubtful whether "discreet and learned" may not be a limitation. What then are the principles regulating practice where there is doubt as to jurisdiction? The line to be followed is generally indicated as the opposite of the condemned proposition, "Non est illicitum in sacramentis sequi opinionem probabilem de valore sacramenti relicta tutiore."

Now doubt is of two kinds, as Suarez [xxv. 6] points out:—1. Proprium sc. pure negativum—the mind being in suspense, and unable to decide by any positive judgment. 2. Improprium—sc. solum ratione formidinis, quamvis determinare possit ferre judicium probabile, licet incertum in quo potest esse latitudo, et varietas, quia potest utraque pars judicari æque probabilis vel una probabilior quamvis altera sit probabilis, et e converso. Now when the doubt is of the former kind, the general rule is, that it is never lawful to exercise the office of confessor, except when there is very grave necessity. This may arise in two cases—1. In articulo

mortis. 2. In certain special conditions of the penitent, e.g., when he is bound to say mass, or to communicate, or cannot avoid doing either without giving scandal, and his conscience requiring him to go to confession, he cannot go to a confessor other than one about whose jurisdiction there is doubt, without either—1. grave incommodum—2. danger of making a bad confession—or 3. danger of causing the name of an accomplice, or partner in sin, to become known. But there is the condition attached, if absolution is given in such case, "ut detur sub conditione et cum onere iterandi confessionis." When the doubt is of the second kind, namely, that there may be sufficient jurisdiction, but, on the other hand, there is a contrary opinion, which is at least probable: in this case it is permissible to confess to a priest about whose jurisdiction there is such doubt, if recourse cannot be had to another. Suarez [*ubi sup.*] says, "Primus modus dicendi esse potest hoc ipso quod minister juxta probabilem doctorum sententiam censetur habere jurisdictionem ad ministrandum hoc sacramentum quandocunque illa utitur re vera illam habere ex tacita Ecclesiæ concessione. Et hoc principium in jure receptum est ut qui communi existimatione et opinione magistratum gerit, licet in re ipsa munus illud vero titulo non obtineat, nihilominus gesta ejus valeant propter commune bonum. Ergo in præsenti quia probabilis opinio sufficit ad hanc communem existimationem verisimile est ecclesiam supplere defectum si fortasse aliquis in re manet et confirmatur ex universali ecclesiæ consuetudine quæ est sufficiens signum jurisdictionis. Est autem universalis ecclesiæ usus ut sacerdotes secure utantur hujusmodi jurisdictione in administratione hujus sacramenti;" that is, of course, when necessity calls, and no other priest can be had. But Suarez concludes by very earnestly exhorting his brother priests to be most cautious about using such jurisdiction, and never to do so unless necessity absolutely compels them. Shall I be presumptuous, dear Master and Brethren, if I venture, more especially in connection with what I have suggested in respect to "discreet and learned," to very humbly, yet earnestly, endorse the appeal of Suarez?

And so if a priest is mistaken as to his jurisdiction, and acts bonâ fide, or in canonical language, cum titulo colorato, that is with a defect in his jurisdiction of which he is

unaware, then, notwithstanding the defect, the absolution he pronounces is both licit and valid, because the Church is held to supply the defect—so communiter doctores. But if he conceal the defect, or merely imagines without any ground that he possesses jurisdiction, that is if he acts sine titulo colorato, then the common opinion is, that the absolution is void; but some affirm that if the penitent is acting bonâ fide, the Church in this instance also, supplies the defect (cf Ferraris s. v. Confessarius I. 34—40).

There remain two more points to which I must ask your attention: they may however be discussed very shortly. The first is as to the duration of jurisdiction. We have been discussing jurisdiction quoad personas, we must discuss it quoad tempus and quoad locum.

As to ordinary jurisdiction there is no difficulty; that of course lasts so long, and no longer, than the possession of the munus out of which it flows lasts.

Delegated jurisdiction may be given either for a fixed time or not. If the time be fixed, it determines with the lapse of that time. If no limit of time be fixed, it continues until revoked. But jurisdiction may be limited as to time by the circumstances of its grant, as well as by explicit limitation; "si concessio sit ad actum limitatum, vel ad materiam determinatam, ultra eam non extenditur, propter rationem factam quæ eodem modo locum habet in præsenti." [Suarez, xxvi. 3. 2.] Thus jurisdiction is determined by the accomplishment of the act for which it was granted, but lasts until such act is accomplished. For instance, in the case of a penitent having the facultas eligendi, that faculty, as we have expressly seen, is not terminated *uno acto*, that is by the choice of one confessor, but extends to the choice of any number. Now when a penitent chooses N. as his confessor, N.'s jurisdiction extends over the penitent in regard to everything which forms the matter of the confession then made, and is not terminated until absolution has been given. So that if N. in the exercise of the potestas ligandi refuses absolution until a certain act, an act of restitution for instance, or some similar thing were performed, the performance of which he had a right to demand as a condition of giving absolution, the penitent remains under N.'s jurisdiction until that act is performed, nor could he under such circumstances

go to another priest, and get absolution and remission of the penance, without N.'s leave. But directly the absolution is given N.'s jurisdiction ceases, and the penitent is free to go to another confessor. And even if he continues to go to N. habitually, still N. cannot acquire any habitual jurisdiction over him, but simply gets jurisdiction each time quoad actum. In other words, the penitent is not N.'s subditus except during the interval that elapses between his kneeling down in the confessional and his receiving absolution. Of course N.'s jurisdiction extends further per accidens, as the penitent is bound to fulfil those things which N. in the rightful exercise of that jurisdiction compelled him to. You will, I need perhaps scarcely remark, of course perceive that I am not saying anything as to the tie subsisting between a director and his spiritual pupils—that is a matter belonging not to canon law, but to moral and ascetical theology.

Delegated jurisdiction, when it is acquired personaliter, may be lost not only by the revocation of the grant by the delegator himself, but by his superior. A distinction must however be drawn between the two cases. For whereas "is qui delegavit suo arbitrio *sine ulla causa* potest revocare non solum valide sed licite, per se loquendo, quia utitur jure suo et quasi re propria," it is otherwise when the superior revokes a grant made by an inferior ordinary; for, "superior non potest revocare delegationem factam ab inferiore sine aliqua rationabile causa, idque non tam propter jus acquisitum à delegato quam propter jus ipsius delegantis, quod habet ex vi suæ jurisdictionis ordinariæ quod habet ad committendam illam alteri; nec potest hoc usum privari sine rationabili causa. Immo si evidenter sit injusta revocatio, videri potest nulla, quia est privare alterum irrationabiliter invitum re sua." [Suarez, xxvi. 3. 3.]

Delegation is not determined by the death, suspension, or excommunication of the delegator when he is a prelate—that is to say, delegation in foro pœnitentiæ; for it is otherwise in foro externo; thus the power of the vicar-general ceases ipso facto on the death of the bishop. But the contrary principle, as I have just said, applies to the case of jurisdiction in foro pœnitentiæ, "quia delegatio hujus jurisdictionis non est pensenda per regulas justitiæ, ut sic dicam, sed gratiæ: regula autem gratiarum est, ut non expiret per mortem

concedentis." [Suarez, *ubi sup.* 7.] And the same, generally speaking, holds with regard to the jurisdiction delegated by a parochus: "Ultimo loco dicendum est de parocho qui delegavit jurisdictionem suam assumendo aliquem in vicarium, seu co-adjutorem suum propria tantum auctoritate absque approbatione vel confirmatione episcopi. In quo censeo consulendam esse consuetudinem, nam videtur hoc pendere ex voluntate episcoporum tacita vel expressa." [*Ibid.* 12.]

The next and last point is as to jurisdiction quoad locum. In the case of ordinary jurisdiction this gives the right of exercising the office of confessor within such bounds as the munus, or beneficium through which the jurisdiction comes, extends to, or affects. The jurisdiction of a parochus extends throughout his parish, and so on. Similarly the extent quoad locum of delegated jurisdiction is defined either expressly in the grant, or else extends within the same limits as that of the ordinary who grants. If the ordinary—be he bishop or parochus, &c.—delegates jurisdiction in general terms, then it extends generally. But if he indicate a certain place, it extends per se loquendo only to that place. Thus when a bishop licences an assistant curate, there is a special designation of the place where the "ecclesiastical duties" are to be performed, and therefore he has jurisdiction quoad locum only within the bounds of the parish. I have said *per se loquendo*, for the proprius sacerdos can hear the confessions of his subditi, wheresoever they may be. Thus Victoria [*Sum. Sacra.* 151] says, "Quæritur ubi potest proprius sacerdos audire confessionem; utrum curatus in uno episcopatu possit audire sibi subditum in alio episcopatu? Respondeo, *omnino quod sic.* Quia sit sine strepitu judicii, et nemini sit injuria." And so Suarez [xxv. 1. 17], "Quæritur an jurisdictio terminetur locis aut personis id est an possit exerceri intra terminos diœcesis, vel parochiæ circa quascunque personas in ea existentes: vel e contrario solum circa personas proprias talis diœcesis ubicumque existant? Respondeo jurisdictionem terminari personis et non localibus terminis. Itaque episcopus potest absolvere subditum suum si cum illo simul versetur extra diœcesim suam, vel potest illi dare facultatem eligendi confessorem ubicumque extiterit. Ratio est quia hoc sacramentum *per se* requirit jurisdictionem in personam, quia illa judicanda est; hœc autem juris-

dictio nec acquiritur nec admittitur ratione presentiæ vel absentiæ localis. Itaque sacerdos habens jurisdictionem ab episcopo in omnes suos subditos potest absolvere aliquem eorum etiamsi ambo extra diœcesim inveniantur: quia illa circumstantia loci nihil refert ad hoc sacramentum, nec tollit aut dat jurisdictionem." So also Reginaldus [*Praxis Pœnitentiæ* I. 8. 93.] There is however some divergence of opinion as to whether this power extends to those priests who only have delegated, as well as to those who possess ordinary jurisdiction. Sylvester [v. *Conf.* I. 14] asserts the negative. But Reginaldus concludes against him, that no distinction can be drawn. Soto also [In 4 *Sent.* xviii. 4. 3, § Aliud vero] takes the same view. Victoria, as we have seen, distinctly asserts that the proprius sacerdos has this power. But the proprius sacerdos, as S. Thomas says, "duplex est vel ex jurisdictione ordinaria vel ex delegata" [In 4 *Sent.* d 17. 3. 2]. We may therefore certainly conclude that every priest, who has the title of proprius sacerdos can absolve his subditi, that is, all those to whom he is the proprius sacerdos, wheresoever they and he may be.

I will ask you, however, to observe carefully the principle on which this proceeds. Ubi personæ ibi locum. It is the same principle by which in civil and international law an ambassador's residence is reckoned, for the purpose of legal acts, as a part of the country of the sovereign by whom he is accredited. The presence of the ambassador, and of subjects of the crown whose representative he is, constitute the place where they are, even if it be merely a temporary hired house, a part of their native country, so that, e.g., a marriage solemnised therein, according to the laws of their own country, and not according to that of the foreign country where they physically are, would be a valid ceremony. In fact they are morally and legally considered in their own country, though physically in a foreign one. Now this is really the principle which governs the case we have been considering. The proprius sacerdos and his subditus are for the purpose of jurisdiction in foro pœnitentiæ considered to be morally and canonically as in their own diocese or parish, though physically they are in a foreign diocese or parish. But this principle must not be laterally extended, for it is only in favorem pœnitentis. The priest can do all such acts,

as he could do at home in respect to such penitents, but he can do such acts only; he cannot absolve any penitent who is not his subditus ex jure. Just as the ambassador (if he have commission so to do from his own sovereign) might give judicial decisions in respect to his own countrymen with regard to matters arising within the necessary precincts of his residence — that is, he could act as a judge; but he could not therefore judge *anyone* who came to him, though he might do so if in his own country. We must carefully bear these principles in mind, as they are of the highest practical importance, and as otherwise we might arrive at the conclusion that there was really no such thing as the limitation quoad locum, and be landed in the absurdity, as Reginald [*ubi sup.*] says, of supposing that once a priest obtained jurisdiction as a confessor, he became so for the whole world—confessor totius orbis—wheresoever he might be. It follows however from the above considerations, that though the proprius sacerdos may absolve his subditi wheresoever he and they are (he cannot, however, do so in a church without leave, tacit or expressed, of the rector — in the canonical sense—of that church), yet he cannot, when out of his own parish or locality within which he has jurisdiction, absolve anyone else; and so he would not be able to hear even a penitent who had the potestas eligendi. That is, if he only proceeded on the strength of his own jurisdiction. For of course, if he obtained the leave of either bishop or parochus he could do so, because then he would be acting on jurisdiction delegated from such bishop or parochus, and not on his own original jurisdiction. This, as applied to our own case, of course proceeds on the view as to "discreet and learned" which I have urged on your attention. But even if you decline to accept that view, you would still have to grant that if the penitent chooses a simplex sacerdos as his confessor, such priest, inasmuch as he must somehow have jurisdiction quoad locum, cannot hear confessions in a church without the permission, much less against the will, of the rector. Whether he could do so elsewhere, I confess, I can give no opinion. Indeed, this seems to me one of the many difficulties — insoluble, as I believe, on any principles of canon law — in which that hypothesis lands us. The practice of the mendicant orders, in hearing confessions even

at the market cross, is the only thing at all parallel to a practice which I must, with all due deference to the great names amongst us which are I know against me, call a state of utter ecclesiastical anarchy. But it is only apparently parallel, because the mendicant friars had jurisdiction delegated to them, and were expressly granted privileges; how far, however, conducive to ecclesiastical order, or the good of the Church, history must tell us.

It only remains to sum up the conclusions I have endeavoured to present to you as regards the necessities of our own position. They are chiefly these. Jurisdiction is necessary for valid absolution. It belongs to all beneficed priests in cure of souls, and cannot be taken from them, so long as they hold their benefices and are not suspended by valid ecclesiastical sentence. It also belongs to all assistant curates, being delegated to them directly by the bishop. It can also be delegated to any priest by any parochus, unless the proposed delegate be inhibited by the bishop, or there be any diocesan statute, or custom having the force of statute, to the contrary. Such delegation may be temporary or permanent, if the diocesan do not object. But no priest can absolve unless he have such jurisdiction. All the faithful of the Anglican obedience have the right to choose their own confessor so long as they choose a priest who has ordinary or delegated jurisdiction, or at least is a graduate in theology. Priests may hear the confessions of their subditi, that is, of those who are domiciled in their parishes, wheresoever they may be. But they cannot hear anyone else except, within their own churches, or parishes unless they have permission from an ordinary, either the parochus or his superior. Prelates, e.g. superiors of religious houses, if recognised by the bishop or superior ecclesiastical authority, have jurisdiction over the members of their own houses, and may hear the confessions of any besides who come to them in their own monasteries; but they cannot absolve elsewhere without permission as above. The expression "discreet and learned," though not a technical expression, yet means more than idoneus à jure divino et naturali, and must be taken to mean one having jurisdiction. It is extremely doubtful whether a title to holy orders is a sufficient qualification. It is not permissible to act on doubtful jurisdiction, unless in cases of extreme necessity, and then only sub conditione.

I have not attempted, dear Master and Brethren, to present to you anything like an exhaustive treatment of this subject. It would have been at once presumptuous and impossible to do so. All I have desired to do has been to direct your attention to certain questions of the greatest possible importance, and to ask you to weigh them. My treatment of a subject so wide and so deep, has necessarily, in the form I have had to adopt, been wanting in fulness; but I can only trust it will not be found wanting in accuracy, though if it be so I shall be most thankful for correction. All I can lay claim to is that I have tried not to put forward my own views—and I hope, except where I have specially indicated the fact, that I have not done so; but simply to follow, as far as my limited studies in so great a field as the sacred science of Canon Law have extended, the dicta and the reasonings of approved writers and canonists. If I have appeared at all too assertive, I beg that your charity will ascribe this fault to my desire to be as brief as might be.

Whether you are able to accept my conclusions or not, I know you will agree with me as to the importance of this inquiry, concerning, as it does, not simply a matter of ecclesiastical order, but grave points in the practice of the science of all sciences, the science of souls.