

The Catholic Lawyer

Volume 1
Number 3 *Volume 1, July 1955, Number 3*

Article 13

Question Box

Follow this and additional works at: <https://scholarship.law.stjohns.edu/tcl>

This Question Box is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

Because of the extremely varied nature of the questions which this column will be called upon to answer, no single editor has been chosen for the Question Box, but experts will be called upon as occasion demands.

QUESTION BOX

Question

In the case of U. S. ex rel. Cooper v. Denno, 221 F. 2d 626 (2d Cir. 1955), Judge Frank, concurring, states at page 631: "A rule or constitutional principle is useless if the burden of proof necessary to vindicate it is so heavy as to preclude its being effective. (Kenney tells us that, at one time, in Canon Law, the conviction of a Cardinal for certain kinds of offenses required seven eye-witnesses. Assuming that Kenney's report is correct, one can guess how many Cardinals were ever convicted with so heavy a burden of proof on their accusers.)"

Can you tell me the background of the canonical rule alluded to?

Answer

This is the latest restatement of a very ancient fiction. Judge Frank's citation to Kenney is correct [Kenney, Criminal Law 456 (1936 ed.)] and Kenney cites Fortescue correctly [Fortescue, de Laudibus Legum Angliae, c. 32]. But the canon on which Fortescue relies is a forgery.

Gratian as early as 1150 and several canonists thereafter quote the canon but they are careful to note two things:

1. The "canon" was not operative in 1150 or at any later time (two eye-witnesses were then sufficient), and
2. In its original form the "canon" seems to have had reference to witnesses of reputation (hearsay testimony) rather than to eyewitnesses of concrete fact.

But Kuttner, *Cardinalis: The History of a Canonical Concept*, in 3 *Traditio* 129

(1945) at page 190 shows that the canon, which was attributed to Pope Sylvester I (died 335) as early as the ninth century, was actually a forgery which first appeared two centuries after the death of Sylvester I. During the Middle Ages, it was not suspected that this was a forgery.

It should be noted that Kenney's authority, Selden, the translator and annotator of Fortescue, published his work in 1616, at a time when the Catholic Church and its Canon Law could expect little sympathetic treatment in England. In fact Selden himself relies upon a source subtly titled "Master Key of Popery." The author of this work, Gavin, ascribes the Canon to the Second Council of Rome under Sylvester II. But Leo IV whom Gratian (and Selden) cites as his authority for the Sylvestrian canon died in 855. Since Sylvester II lived in the 12th Century, Leo IV could only have had in mind Sylvester I.

It is regrettable that Judge Frank has repeated Selden's baseless charge, "The Design of which canon was undoubtedly to make the Proof against a Cardinal next Door to impossible." In the time of Sylvester I the modern office or title of Cardinal was unknown. Moreover the discipline of the Church — just emerging from the catacombs — was excellent and it is preposterous to charge Sylvester with deliberately fashioning procedural rules to make it possible for the clergy of any rank to commit crimes with impunity.

It is likewise to be regretted that Judge Frank also implies that the canon in ques-

tion specified offenses. Kenney uses the word "unchastity" and Judge Frank [who had originally used the word "adultery" (see opinion filed in Clerk's Office, U.S. Ct. of App., 2d Cir., No. 230, Oct. Term, 1954, Docket No. 23497)] substitutes the words "certain kinds of offenses." Yet neither the forged canon, nor Gratian, nor Fortescue, nor even Selden, specifies any particular kind of crime whatsoever.

A detailed treatment of this famous "canon" will appear in a subsequent issue of THE CATHOLIC LAWYER. Meanwhile interested readers are referred to Kuttner, *Cardinalis: The History of a Canonical Concept*, 3 *Traditio* 129-214 (1945).

Question

One of our judges expressed a desire to have a copy of the Code of Canon Law in English. Several of our lawyers also have expressed a similar interest. I would deeply appreciate any suggestions you might make as to what volume or volumes in English are obtainable which might be recommended. I would also like to know whether the Canons are published as a Code, with or without annotations, and if so, from whom the Code can be acquired.

Answer

The only official text of the Code of Canon Law is in Latin and is published by the Vatican Press. The unofficial but authoritative footnotes indicating sources drawn upon by the Commission for Codification are keyed to the official text in some editions. Copies of the Code are available through dealers in Catholic books, such as Benzinger Bros., 6 Barclay St., New York City.

As far as I know, there is no unannotated

edition of the entire Code in English. One American publication offers nearly all the Canons of the Code in English translation; each Canon is followed by a few lines or several pages of comment, depending upon the importance or difficulty of the text. This work is "A Practical Commentary on the Code of Canon Law," by Woywood and Smith, volumes 1 and 2 bound together, 1952, Joseph F. Wagner, Inc., New York City.

There are several texts and commentaries widely used in the United States. Some of the best known are: "Canon Law" by Bouscaren and Ellis, 2d revised edition, 1951, Bruce Publishing Company, Milwaukee, Wis.; "Manual of Canon Law" by Ramstein, 1948, Terminal Printing and Publishing Co., Hoboken, N. J.; "The Sacred Canons," by Abbo and Hannan, two volumes, 1952, B. Herder Book Co., St. Louis, Mo. None of these offers the text of all the Canons; they omit entirely or treat very summarily the Canons of the Fourth Book of the Code, *De Processibus*. Monsignor Doheny, an American priest who is an Auditor of the Sacred Roman Rota, has written two treatises on "Canonical Procedure in Matrimonial Cases," the greater part of the text being in English. One of these volumes treats the formal process and the informal process is the subject of the other. Both are published by Bruce Publishing Co., Milwaukee. An excellent work on background and introduction to the Code is "Canon Law" by the present Apostolic Delegate to the United States, Archbishop Cicognani, 1935, Dolphin Press, Philadelphia, Pa.

The English text of official documents interpreting or supplementing the Code, as well as digests of some notable decisions of the church courts are found in "The Canon

Law Digest," by Bouscaren, published by Bruce. It is now in three bound volumes, the latest dated 1953. It is kept up to date with an annual supplement, the last to appear was dated August 11, 1954.

Question

We are interested in securing reprints of the prayer and picture of St. Thomas More appearing on page 127, Volume 1, Number 2 of THE CATHOLIC LAWYER. If you can give me any information as to where these can be obtained, it would be appreciated.

Answer

The prayer card mentioned can be se-

cured from THE CATHOLIC LAWYER, 96 Schermerhorn St., Brooklyn 1, New York at \$1.75 for 50 and \$3.00 for 100.

A card containing prayers dedicated to Our Lady of Equity by Dr. John C. H. Wu may be obtained by writing to either the Reverend Nicholas Maestrini, P.I.M.E., Provincial Superior of the Missionaries of Saints Peter and Paul, 121 East Boston Boulevard, Detroit 2, Michigan or The Catholic Lawyers Society, c/o Rev. Charles J. Malloy, 1234 Washington Blvd., Detroit 26, Michigan.

